

Last Date Amended: June 17, 1993

TITLE 25 - DEPARTMENT OF AGRICULTURE, BUREAU OF PLANT INDUSTRY

Chapter 1 - NEBRASKA APIARY ACT REGULATIONS

001 Definitions.

001.01 The definitions of terms contained in the Nebraska Apiary Act shall apply to such terms when used in these regulations.

001.02 Africanized honey bees shall mean *Apis mellifera scutellata*.

001.03 Alcohol shake shall mean a detection method for Varroa mites where approximately 400 bees are collected in a glass jar and treated with alcohol to dislodge any mites present.

001.04 Ether roll shall mean a detection method for Varroa mites where approximately 400 bees are collected in a glass jar and treated with ether to dislodge any mites present.

001.05 Varroa mites shall mean *Varroa jacobsoni*.

002 Certification by the Department. A person owning or in charge of an apiary shall not receive a certificate from the Department to move or sell such apiary or any part thereof, unless such person has paid all appropriate fees as set out in 25 NAC 1-004 and his or her apiary is apparently free from infectious or contagious bee diseases, parasites, or pests.

002.01 An apiary is apparently free of American foulbrood as follows:

002.01A An apiary shall be immediately deemed to be apparently free of American foulbrood if less than 3% of the colonies in the apiary are infected with American foulbrood provided that the owner or person in charge removes any infected colonies from the apiary.

002.01B An apiary shall be deemed to be apparently free of American foulbrood if more than 3% of the colonies in the apiary are infected with American foulbrood, provided that:

002.01B1 The apiary is not moved for at least 30 days;

002.01B2 All American foulbrood infected colonies are removed from the apiary;

002.01B3 Treatment measures have been taken; and,

002.01B4 The Department has reinspected and released the apiary.

002.02 An apiary is apparently free of Varroa mites as follows:

002.02A The owner or person in charge of the apiary has placed an EPA approved acaricide in the colonies to control any Varroa mites present prior to the Department's inspection.

002.02B Ether roll or alcohol shake methods done by the Department indicate Varroa mites are not present in the apiary.

002.03 An apiary is apparently free of Africanized honey bees if the bees in the apiary are the descendants of breeding stock which is certified as European stock. Breeding stock certification shall be done by the Fast Africanized Bee Identification System.

003 Registration Fee. There shall be paid to the Department an annual registration fee of 15 cents per colony, except that a minimum fee of \$5.00 shall be required, by every person owning, leasing, or possessing more than four colonies of bees.

004 Certificate Fee.

004.01 All persons must request a certificate as provided for in sections 81-2,172 and 81-2,173 of the act.

004.02 Prior to the issuance of a certificate, there shall be paid to the Department a certificate fee, to be paid in the following amounts:

004.02A \$150 for the inspection of 1 to 250 colonies;

004.02B \$200 for the inspection of 251 to 500 colonies;

004.02C \$300 for the inspection of 501 to 1,000 colonies; and,

004.02D \$400 for the inspection of more than 1,000 colonies.

004.03 Persons who file an application pursuant to section 81-2,173 after July 1 shall, in addition to the certificate fee, pay for mileage and inspection time in the following amounts:

004.03A Mileage: 24 cents per mile.

004.03B Inspection time: \$15.00 per hour, including driving time.

005 Annotation. Neb. Rev. Stat. Sections 81-2,165 to 81-2,180. [Reissue 1987, Cum. Supp. 1992 and Laws 1994, LB 1071].

NEBRASKA ADMINISTRATIVE CODE

LAST DATE AMENDED: December 27, 1995

TITLE 25 - DEPARTMENT OF AGRICULTURE, BUREAU OF PLANT INDUSTRY

Chapter 2 - PESTICIDE REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in the administration of the Pesticide Act, Neb. Rev. Stat. §§2-2622 to 2-2655.

002 Administration. These regulations shall be administered by the department of Agriculture's Bureau of Plant Industry located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is (402) 471-2394.

003 Definitions. In addition to the terms listed below, the definition of terms found in the Pesticide Act shall apply to such terms when found in these regulations.

003.01 LEVEL OF VIOLATION shall mean the alleged violation is a first or subsequent violation.

003.02 FIRST VIOLATION shall mean the alleged violator has not been found by an order of the director or any court, or by his or her own admission in a settlement agreement, to have committed a violation of the act in the three years immediately preceding the date of the alleged violation.

003.03 SUBSEQUENT VIOLATION shall mean the alleged violator has been found by an order of the director or any court, or by his or her own admission in a settlement agreement, to have committed a violation of the act one or more times within the three years immediately preceding the date of committing the current alleged violation.

003.04 BASE FINE shall mean the amount of the administrative fine set by regulation for a particular violation of the act prior to any adjustments for gravity or size of business.

003.05 SETTLEMENT AGREEMENT shall mean a written agreement between the department and an alleged violator resolving any matter

before the department.

003.06 MINOR HARM shall mean actual or potential harm which is or would be of short duration, has no lasting effects or permanent damage, or is easily reversible and harm did not or would not result in significant monetary loss.

003.07 SERIOUS OR WIDESPREAD HARM shall mean actual or potential harm to human health or to the environment which does not meet the parameters of minor harm.

003.08 LAWN CARE PESTICIDE shall mean any pesticide applied under the ornamental and turf pest control category.

004 Fees.

004.01 Pesticide Registration Fees. There shall be paid to the department an annual fee of \$30 for each pesticide product to be registered in the state. Such fees shall be due by January 1st of each year. If a person fails to apply for a renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to 25% of the fee due and owing per month, not to exceed 100% for each product to be renewed in addition to their renewal fees.

004.02 Dealer License Fee. All dealers shall pay to the department an annual license fee of \$25. Such license shall be required for each location where pesticides are distributed at retail or wholesale but should not include any location where pesticides are stored and later distributed to other locations owned by the same dealer. Those persons who distribute pesticides, but do not have a permanent location shall also obtain a dealer license.

005 Standards for Licensing Pesticide Applicators. Any person needing to be licensed as a certified applicator shall make application on a form provided by the department. The license shall expire on April 15th following the third year in which it was issued.

005.01 General Standards for Certified Applicators. All certified applicators shall demonstrate practical knowledge of the principles and practices of pest control and safety in use of pesticides. Determination of competency shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's licensure and knowledge of the following areas:

005.01A Label and Labeling Comprehension.

005.01A1 The general format and terminology of pesticide labels and labeling;

005.01A2 The understanding of instructions, directions for use, warnings, terms, names, symbols, and other information commonly appearing on pesticide labels;

005.01A3 Classification of pesticides and meaning of the terms, "general and restricted use pesticide"; and

005.01A4 Necessity for use consistent with the label. Labels and labeling are legal documents and the directions they contain shall be followed.

005.01B Safety. Factors including:

005.01B1 Understanding the terms acute and chronic pesticide toxicity, common exposure routes and how such hazard is determined by pesticide toxicity and exposure;

005.01B2 Common types and causes of pesticide accidents;

005.01B3 Precautions necessary to prevent injury to applicators and other individuals in or near treated areas;

005.01B4 Recognition of symptoms of acute pesticide toxicity and practical treatment;

005.01B5 First aid and other procedures to be followed in case of a pesticide accident;

005.01B6 Worker protection, including warnings and re-entry restrictions; and

005.01B7 Proper identification, storage, transport, handling, mixing, and application procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers, and the need for and use of personal protective clothing and equipment.

005.01C Environmental Risk. The potential environmental consequences of the use and misuse of pesticides that may cause drift and runoff, precautions for protection of endangered and threatened species, and methods of spill prevention and control. Such consequences may be influenced by such factors as:

005.01C1 Weather and other climatic factors that contribute to pesticide drift and run off;

005.01C2 How terrain, soil and other substrata influence surface and ground water contamination;

005.01C3 Recognition of sensitive areas, fish, wildlife and other nontarget organisms affected by pesticide applications, drift and runoff; and

005.01C4 Drainage patterns.

005.01C5 Knowledge of management practices and their application to prevent pesticides from reaching ground water and surface water.

005.01D Pest Identification and Biology. Factors such as:

005.01D1 Common features of pest organisms and recognition of characteristics of damage or problems caused by pests and needed for pest recognition;

005.01D2 Principles of pest identification and recognition of relevant pests;

005.01D3 Pest development and biology as it may be relevant to problem identification and control.

005.01E Pesticides and chemical control. Factors such as:

005.01E1 Types of pesticides;

005.01E2 Types of formulations and adjuvants;

005.01E3 Concepts of pesticide compatibility, synergism, persistence, toxicity of the formulations, and animal and plant resistance;

005.01E4 Hazards and residues associated with use;

005.01E5 Factors which affect a pesticide's effectiveness or lead to such problems as resistance to pesticides;

005.01E6 Selection of correct formulation and method of application for a use site, pest, and pesticide; and

005.01E7 Dilution procedures.

005.01F Equipment. Factors including:

005.01F1 Characteristics and main uses of typical pesticide application equipment and advantages and limitations of each type, including selection of the most appropriate equipment for applicable situations; and

005.01F2 Proper use, care and maintenance, and calibration of application equipment.

005.01G Application techniques. Factors including:

005.01G1 Methods used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;

005.01G2 Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse;

005.01G3 Prevention of drift and pesticide loss into the environment; and

005.01H Calibration and calculation.

005.01H1 Dilution of concentrate formulations in accordance with label directions.

005.01H2 Calculation of area or volume to be treated and amount of pesticide to be applied.

005.01H3 Adjustment of application equipment's nozzle, pressure, and speed to obtain correct pesticide output.

005.01I Applicator related laws and regulations.

005.01I1 Applicable federal and state laws and regulations.

005.01I2 Applicator responsibility for pesticide use consistent with its label or labeling and supervision of noncertified employees assigned to use a restricted use pesticide.

005.01I3 Applicator liability and penalties.

005.01J Other. Worker protection standards, endangered species protection requirements, and ground water protection.

005.02 Commercial and Noncommercial Applicators.

005.02A Categories and Subcategories. Commercial and noncommercial applicators may elect to be trained, examined and certified according to the following categories and subcategories:

005.02A1 Agricultural pest control - plant. This category includes commercial and noncommercial applicators using or supervising the use of restricted use pesticides in production of agricultural crops, including, but not limited to feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural land.

005.02A1(a) Fumigation of soil. This subcategory includes commercial applicators using or supervising the application of restricted-use pesticides for soil fumigation in production of an agricultural commodity. Any individual certified in this category is required to be certified in 005.02A1-agricultural pest control-plant.

005.02A2 Agricultural pest control - animal. This category includes commercial and noncommercial applicators using or supervising the use of restricted use pesticides on animals, including, but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined.

Doctors of veterinary medicine engaged in the business of applying restricted use pesticides are included in this category.

005.02A3 Forest pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas.

005.02A4 Ornamental and turf pest control. This category includes commercial applicators using or supervising the use of restricted use or general pesticides and noncommercial applicators using or supervising the use of restricted use pesticides to control pests in all lawn care applications, including the maintenance and production of ornamental trees, shrubs, flowers, and turf, including in and around structures, green houses, plant nurseries, golf courses, athletic fields, public or private grounds and turf farms.

005.02A5 Aquatic pest control. This category includes commercial and noncommercial applicators using or supervising the use of a restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in 005.02A9 below.

005.02A6 Seed treatment. This category includes commercial and noncommercial applicators using or supervising the use of restricted use pesticides on seeds.

005.02A7 Right-of-way pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, fencelines, structural perimeters, and other similar areas.

005.02A8 Structural and health related pest control. This category also includes commercial and noncommercial applicators using or supervising the use of restricted use pesticides in, on, or around human dwellings, institutions, such as food handling, preparation, manufacturing, processing, packaging and dining facilities, schools and hospitals, industrial establishments, including warehouses, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.

This category includes commercial and noncommercial applicators using restricted-use pesticides to control insects, structural wood destroying pests, pest birds, and vertebrate pests. Any person who applies structural pest control pesticides to the land of another for hire or compensation shall be licensed in this category regardless of whether such person applies any restricted-use pesticides.

005.02A9 Public health pest control. This category includes commercial or noncommercial applicators using or supervising the use of restricted use pesticides for state, federal or other governmental units in public health programs for the management and control of pests, such as mosquito vectors, having medical and public health importance. This category also includes commercial and noncommercial applicators

using or supervising the use of restricted use pesticides in swimming pools and related facilities and cooling water systems used to transfer or dissipate heat.

This category also includes commercial and noncommercial applicators using or supervising the use of restricted use pesticides to disinfect or sterilize medical/veterinary equipment, food/beverage/drug processing equipment, and the environmental surfaces of such places as hospitals/nursing homes, food processing areas, and plant and animal breeding facilities.

005.02A10 Wood preservation. This category includes commercial and noncommercial applicators using or supervising the use of any restricted use pesticide for preservative treatment of wood or wood products by pressure or nonpressure methods to protect wood that will be exposed to weather, including ground line pole treatment, waterproofing millwork, cutoffs, or supplemental field treatment.

005.02A11 Fumigation. This category includes commercial and noncommercial applicators who use or supervise the use of restricted-use pesticides, in gaseous or solid form, within enclosed gas tight spaces such as tents, vaults, stacks, structures, vehicles, or vessels for a wide variety of conditions and commodities, including raw agricultural products.

005.02A12 Aerial pest control. This category includes commercial applicators using or supervising the use of restricted use pesticides applied by fixed or rotary wing aircraft for use in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, fencelines, structural perimeters, other similar areas, and in the production of agricultural crops, including, but not limited to feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; grasslands, and non-crop agricultural land.

005.02A13 Regulatory/demonstration and research pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted use pesticides for federal, state, or other governmental units in the control of regulated pests.

This category also includes commercial and noncommercial applicators who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstrations. Examples are such persons as extension specialists, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. Also included in this category are commercial applicators conducting field research who use or supervise the use of restricted use pesticides. Examples are such persons as state and federal government employees, and other persons conducting field research utilizing restricted use pesticides.

005.02B Specific Standards of Competency. Commercial and noncommercial applicators shall be required to satisfactorily demonstrate competence in the use and handling of pesticides specific to their certification as such pesticides may be used in Nebraska. Subject demonstration shall be on the basis of a written examination, and as appropriate, performance testing, as a prerequisite to initial certification. A commercial or noncommercial applicator shall not be required to satisfactorily complete training as a prerequisite to examination for licensing. Standards for determination of competency are as set forth below and those which may be approved by the director. Such examination and testing shall include the general standards applicable to all certified applicators and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified.

The specific standards of competency in paragraphs 005.02B1 through 005.02B13 below do not apply to persons conducting laboratory type research involving restricted use pesticides.

005.02B1 Agricultural pest control - plant. Applicators shall demonstrate practical knowledge of: crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

Those applicators using their restricted use pesticides through an irrigation system must also be licensed according to the Nebraska Chemigation Act, Neb. Rev. Stat. §§46-1101 through 46-1148. They shall demonstrate a practical knowledge of equipment associated with chemigation including calibration techniques, and use of backflow prevention devices to prevent contamination of water supplies. They shall demonstrate knowledge of labeling requirements of products registered for chemigation including posting requirements. Further, they shall demonstrate knowledge of the appropriate use of personal protective equipment associated with this type of application.

005.02B1(a) Fumigation of soil. Applicators shall demonstrate practical knowledge of the use of personal protective equipment for fumigation, general safety procedures, including posting, re-entry and aeration. Further they shall demonstrate knowledge of emergency procedures and application techniques appropriate to various situations.

005.02B2 Agricultural pest control - animal. Applicators applying pesticides directly to animals shall demonstrate practical knowledge of: such animals as may be treated and their associated pests; specific pesticide toxicity and residue potential since host animals will frequently be used for food; and the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

005.02B3 Forest pest control. Applicators shall demonstrate practical knowledge of: types of forests, forest nurseries, seed production, and types of pests involved; the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications; the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of: control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife; and proper use of specialized equipment, especially as it may relate to meteorological factors and adjacent land use.

005.02B4 Ornamental and turf pest control. Applicators shall demonstrate practical knowledge of: pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and flowers used in and around structures, green houses, and plant nurseries. They shall demonstrate knowledge of pesticide problems, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control; and application methods which will minimize or prevent hazards to humans, pets and other domestic animals, and wildlife. Because of human proximity to application sites, applicators shall demonstrate practical knowledge of methods and measures used to protect applicators, residents, occupants, workers, and others that may

contact treated plants.

Applicators shall demonstrate practical knowledge of pesticide application methods used in turf management and production and the risks associated with pesticide drift and runoff. Because of the persistence of turf pesticides, applicators shall demonstrate a practical knowledge of measures used to protect humans, pets, and other domestic animals that may contact treated turf.

005.02B5 Aquatic pest control. Applicators in this category shall demonstrate practical knowledge of: the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category; various water use situations and the potential for downstream effects; potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments; and the principles of limited area application.

005.02B6 Seed treatment. Applicators shall demonstrate practical knowledge of: types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination; and the hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seed.

005.02B7 Right-of-way pest control. Applicators shall demonstrate practical knowledge of: a wide variety of environments since rights-of-way can traverse many different terrains, including waterways; problems concerning runoff, drift, and excessive foliage destruction and ability to recognize target organisms; and the mode of action of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in adjacent areas and communities.

005.02B8 Structural/health-related pest control. Applicators must demonstrate a practical knowledge of the following:

Control of pests in and around structures. The applicator shall demonstrate practical knowledge of: household type pests such as cockroaches, ants, silverfish, spiders, food and fabric pests, mice, rats, bats, and other occasional invaders that infest structures, stored products, and food preparation or processing areas such as kitchens, cafeterias, or snack bars; the conditions conducive to pest infestations and selection of appropriate control procedures for each situation. Applicators shall demonstrate knowledge of risks associated with pesticide usage in occupied structures and near food products. Since human exposure, including babies, children, pregnant women, and elderly people is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition including continuous exposure in the various situations encountered in this category. Because health-related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.

Control of wood destroying organisms, excluding fumigation. Applicators shall demonstrate practical knowledge of: structural wood destroying organisms such as beetles, termites, carpenter ants and fungi and conditions conducive to infestation; the ability to select, calibrate, and use appropriate control equipment and procedures including rodding and trenching, topical application of pesticides and local injection of specially labeled liquid or solid wood fumigants in infested wood such as poles, piling, and railroad cross ties. Applicator shall demonstrate

knowledge of applicable pressure or nonpressure preservative treating, and testing equipment. Applicators shall demonstrate knowledge of environmental and health hazards with the use of pesticides used for pest control.

Applicators shall demonstrate knowledge of the risks involved with handling and use of these pesticides and the appropriate application equipment to be used.

Bird control. Applicators shall demonstrate practical knowledge of: protected and unprotected pests, birds, and conditions conducive to bird problems; applicable laws and regulations protecting birds and the actions required in order to control protected pest species; bird control methods and the hazards associated with secondary poisoning of nontarget organisms.

Control of vertebrate pests other than birds and structural invaders. Applicators shall demonstrate practical knowledge of: vertebrate pest animals other than birds and the conditions conducive to infestation and damage by such vertebrate animals; all applicable laws and regulations governing the control and protection of such animals and the actions required to control protected or endangered animals; methods of control of pest animals, the effects of such control on nontarget organisms and other potential effects on the environment.

005.02B9 Public health pest control. Applicators shall demonstrate practical knowledge of: Vector-disease transmission as it relates to and influences application programs; recognition of the wide variety of pests involved, an understanding of appropriate life cycles and habitats as a basis for control strategy; the great variety of environments ranging from streams to those conditions found in buildings; and the importance and employment of such nonchemical control methods as sanitation, waste disposal, exclusion, and drainage. Applicators shall also be aware of all regulator requirements for re-entry precautions and warnings.

Swimming pool pest control. Applicators shall demonstrate practical knowledge of: undesirable microorganisms infesting swimming pools, and their possible health and environmental effects; the pesticides (antimicrobial) used, their effects on humans and the environment, and their compatibility with other pool chemicals; water circulation and pesticide dispersal systems; and shall be able to demonstrate expertise in water testing and ability to make required adjustments to maintain the necessary chemical balance.

Pest control in cooling water systems. Applicators shall demonstrate practical knowledge of the different cooling water systems used to transfer and dissipate heat. They shall demonstrate expertise in identifying and analyzing microbial problems and in selecting the appropriate anti-microbial agents in discharging systems to maintain the micro-organisms at tolerable levels.

Applicators shall demonstrate practical knowledge of: the different micro-organisms that contaminate equipment in different environmental sites, medical breeding, and food processing facilities; the different chemicals used as gases to sterilize equipment with specific chambers or as room disinfectants in enclosed spaces, and the possible hazards associated with the use of such gases; and the different chemical agents used as cleaning and anti-microbial agents to disinfect specific areas within a structure.

005.02B10 Wood preservation. Applicators in this category shall demonstrate practical knowledge of: conditions for which a wood preservative is used; all applicable treating and testing equipment; methods of applying wood preservatives and factors influencing their

effectiveness; potential hazards to health and the environment, including safety procedures and equipment to minimize exposure and first aid in the event of accidents; waste disposal as well as proper handling of spills, and the need for informing purchasers of precautions for handling, use, and disposal of treated wood products.

005.02B11 Fumigation. Applicators shall demonstrate practical knowledge of: conditions requiring the application of fumigants and selection of the most appropriate fumigation methods to use; fumigation equipment used, including application, monitoring, testing, calculating, and personal protective equipment; and the risks involved with the use of fumigants. Applicators shall demonstrate ability to release, distribute, and maintain the correct fumigant concentrations for the products/structure being fumigated under varying conditions, and to completely aerate the fumigant.

005.02B12 Aerial pest control. Applicators shall demonstrate practical knowledge of equipment calibration and maintenance, and the avoidance of problems associated with aerial application such as drift and nontarget injury. Applicators shall demonstrate practical knowledge of: crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

Applicators shall also demonstrate practical knowledge of: a wide variety of environments since rights-of-way can traverse many different terrains, including waterways; problems concerning runoff, drift, and excessive foliage destruction and ability to recognize target organisms; and the mode of action of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in adjacent areas and communities.

005.02B13 Regulatory/demonstration and research pest control. Applicators shall demonstrate practical knowledge of regulated pests, including applicable laws relating to quarantine and other regulations of pests and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgement shall be made in new situations.

Persons demonstrating the safe and effective use of pesticides to other applicators and the public shall be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they shall demonstrate an understanding that pesticide organism interactions and the importance of integrating pesticide use with other control methods. Applicators doing demonstration pest control work or conducting field research or method improvement work with restricted use pesticides shall possess knowledge of all of the general standards detailed earlier in §005.01. In addition, they shall meet the specific standards of competency required under this plan for any section as may be applicable to the particular activity.

005.02C Continuing education units (CEUs) may be used as a method of recertification for commercial and noncommercial applicators. Partial CEU credit may be provided by the department to applicators for those approved educational programs that satisfy a portion of the required recertification topics when such education programs are received prior to the expiration of the certified applicators' license. CEUs shall be available for recertification on programs offered or sponsored by the University, trade organizations, associations, and commercial enterprises. All CEU programs must be approved in advance by the department.

005.03 Private Applicators. Private applicators using and/or supervising the use of restricted use pesticides in production of agricultural commodities, are included in this group. This category also includes private applicators using or supervising the use of restricted use pesticides on animals; and the use of restricted use pesticides for soil or grain fumigation in production of an agricultural commodity.

Those private applicators using a restricted-use pesticide through an irrigation system must also be licensed according to the Nebraska Chemigation Act, Neb. Rev. Stat. §§46-1101 through 46-1148. They shall demonstrate a practical knowledge of equipment associated with chemigation including calibration techniques and use of a backflow prevention device to prevent contamination of water supplies. They shall demonstrate knowledge of labeling requirements of products registered for chemigation, including posting requirements. Further, they shall demonstrate knowledge of the appropriate use of personal protective equipment associated with this type of application.

Private applicators applying restricted-use pesticides by fixed or rotary wing aircraft in the production of or in support of the production of agricultural commodities shall be required to meet the same standards of competency and be licensed as a commercial or noncommercial applicator. Such applicator shall demonstrate practical knowledge of equipment calibration and maintenance, preharvest intervals, re-entry intervals, phytotoxicity, prevention of drift, and potential for environmental contamination and nontarget injury.

005.03A Categories and subcategories. There are no separate categories or subcategories for private applicators.

005.03B Standards of Competency. As a minimum requirement for licensure, a private applicator must possess a practical knowledge of the pest problems and pest control practices associated with that person's agricultural operations; proper storage, use, handling and disposal of pesticides and containers; and related legal responsibilities. This practical knowledge includes ability to:

005.03B1 Recognize common pests to be controlled and damage caused by them.

005.03B2 Read and understand the label and labeling information including the common name of pesticides applied; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and any specific disposal procedures.

005.03B3 Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

005.03B4 Recognize local environmental situations that must be considered during application to avoid contamination.

005.03B5 Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

005.03B6 Understand and comply with rules and regulations relating to worker protection standards, the endangered species protection program, and ground water protection.

005.03B7 Applicator shall demonstrate practical knowledge of the use of personal protective clothing and equipment for fumigation, general safety procedures, including posting and re-entry, and aeration. Further, they shall demonstrate knowledge of emergency procedures and various techniques appropriate to various situations.

006 Record Keeping.

006.01 Private applicators shall record the following information on the application of all restricted use pesticides for a period of three years:

006.01A The brand or product name and the EPA registration number of the pesticide that was applied;

006.01B The total amount of the pesticide applied;

006.01C The location of the application, the size of area treated, and the crop, commodity, stored product, or site to which a pesticide was applied. The location of the application may be recorded using any of the following designations:

006.01C1 County, range, township, and section;

006.01C2 An identification system utilizing maps and/or written descriptions which accurately identifies location;

006.01C3 An identification system established by a USDA agency such as the ASCS or SCS which utilizes maps and a numbering system to identify field locations; or

006.01C4 The legal property description.

006.01D The month, day, and year on which the pesticide application occurred;

006.01E The name and certification number of the certified applicator who applied or who supervised the person making the application;

006.01F Applications of pesticides made on the same day in a total area of less than 1/10 of an acre require the following elements be recorded:

006.01F(1) Brand or product name and EPA registration number;

006.01F(2) Total amount applied;

006.01F(3) Location must be designated as "spot application;" and

006.01F(4) The date of application.

006.02 Commercial and noncommercial applicators shall record the following information on the application of restricted use pesticides. Commercial applicators applying structural pest control pesticides shall also record the following information on all general use pesticide applications made for those purposes. Additionally, it is recommended that commercial applicators applying general use pesticides for lawn care purposes shall also keep such records. All such information shall be recorded within 48 hours of the pesticide application and be kept for a minimum of three years following application. Each commercial applicator, noncommercial applicator, or each firm employing a commercial or noncommercial applicator shall keep and maintain at their principal place of business true and accurate information as outlined below:

006.02A Name and address of the person for whom the pesticide was applied.

006.02B Name, address, and certified applicator number of person making the application. Where a noncertified applicator makes the application, include both the noncertified and supervising applicator information.

006.02C Location of the pesticide application.

006.02D Target pest(s) i.e., type of insect, weed, or disease.

006.02E Site of application i.e., specific crop or commodity, type of field, type of surface, etc.

006.02F Day, month, and year of application.

006.02G Initial starting time of application.

006.02H Trade name and EPA registration number of the pesticide applied.

006.02I Rate of pesticide applied per unit of measure, i.e., pounds per acre, ounces per 1,000 square feet, etc. For spot treatment, indicate mixture rates.

006.02J Total amount of pesticide applied to site.

006.02K Area or size of treated site, i.e., acres, cubic feet, square feet, linear feet, crack and crevice, trap or bait placement, or spot treatment.

006.02L Method of disposal of unused pesticide. If no unused pesticide remained, records should indicate such.

006.02M It is recommended that records be kept of estimated wind direction and velocity at the time of application. Where wind direction and velocity change during the course of application, average wind speed and general direction may be used.

006.02N It is recommended that records be kept of estimated ambient temperature at time of application. The temperature may be taken at the start of the application. In cases of long-term applications, average temperature or periodic temperature may be used. Temperature should be taken of the most appropriate substrate affecting the pesticide application. For aerial or ground/surface applications, air temperature should be recorded. For aquatic applications, water temperature should be recorded. For soil or grain fumigation, soil or grain temperature should be recorded.

006.03 Dealers. Each person who distributes restricted use pesticides in the state shall keep a record of each transaction involving a restricted use pesticide for a period of 36 months from the date of the transaction. Such records shall include the following information:

006.03A The name and address (residence or principal place of business) of the person to whom the restricted use pesticide is made available. No dealer may make a restricted use pesticide available to an uncertified person unless he or she can document that the distribution is to a licensed dealer or the restricted use pesticide will be used by a certified applicator.

006.03B The name and address (residence or principal place of business) of the certified applicator or dealer who will use the restricted use pesticide if different from paragraph 006.03A above;

006.03C The certified applicators' certification number or dealer license number, the state or other governmental unit that issued the certification document, the expiration date of the certification and the categories in which the applicator is certified if appropriate;

006.03D The product name, EPA registration number, and the special local need registration number, if any, on the label of the pesticide;

006.03E The quantity of the pesticide made available for use in the transaction; and

006.03F The date of the transaction.

007 Fines and Penalties. The department case review process will determine the appropriate fine or penalty for each violation of the Pesticide Act in accordance with §2-2650 and any other applicable provisions of the act.

007.01 When it is determined that an administrative fine is an appropriate penalty for a violation of the Pesticide Act, the actual amount of such administrative fine shall be calculated by determining the base fine and making the necessary adjustments for gravity and the size of business as set forth in this section. The department may, however, issue any fine at the statutory maximum for any egregious violation. The base fines established for the specific violations of the Pesticide Act as set forth in Neb. Rev. Stat. §2-2646 are as follows:

007.01A To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following: A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act; a pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration; a pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act; a pesticide that is adulterated; a pesticide or device that is misbranded; a pesticide in a container that is unsafe due to damage; a pesticide which differs from its composition as registered; or a pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act.

007.01A1 Base fine for a first violation is \$1,000.

007.01A2 Base fine for a subsequent violation is \$2,000.

007.01B To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

007.01B1 Base fine for a first violation is \$1,000.

007.01B2 Base fine for a subsequent violation is \$3,000.

007.01C To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

007.01C1 Base fine for a first violation is \$1,000.

007.01C2 Base fine for a subsequent violation is \$4,000.

007.01D To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to (a) apply a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency, (b) apply a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling, (c) employ any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the

methods specified on the labeling, (d) mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling, (e) use a pesticide in conformance with section 136c, 136p, or 136v of the federal act or section 2-2626, or (f) use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

007.01D1 Base fine for a first violation is \$2,500.

007.01D2 Base fine for a subsequent violation is \$5,000.

007.01E To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the act or a rule or regulation adopted and promulgated under the act;

007.01E1 Base fine for a first violation is \$1,000.

007.01E2 Base fine for a subsequent violation is \$2,000.

007.01F To dispose of, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is likely to cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects; likely to pollute a water supply or waterway; or a violation of the Environmental Protection Act;

007.01F1 Base fine for a first violation is \$4,000.

007.01F2 Base fine for a subsequent violation is \$5,000.

007.01G To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

007.01G1 Base fine for a first violation is \$1,000.

007.01G2 Base fine for a subsequent violation is \$2,000.

007.01H To commit an act for which a certified applicator's license may be suspended, modified, revoked, or placed on probation under section 2-2644;

007.01H1 Base fine for a first violation is \$1,000.

007.01H2 Base fine for a subsequent violation is \$2,000.

007.01I To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to a human or that pollutes ground water, surface water, or a water supply;

007.01I1 Base fine for a first violation is \$5,000.

007.01I2 Base fine for a subsequent violation is \$5,000.

007.01J To fail to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

007.01J1 Base fine for a first violation is \$1,000.

007.01J2 Base fine for a subsequent violation is \$2,000.

007.01K To refuse to keep and make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

007.01K1 Base fine for a first violation is \$1,000.

007.01K2 Base fine for a subsequent violation is \$2,000.

007.01L To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

007.01L1 Base fine for a first violation is \$2,000.

007.01L2 Base fine for a subsequent violation is \$5,000.

007.01M To violate any state management plan developed or approved by the department;

007.01M1 Base fine for a first violation is \$1,000.

007.01M2 Base fine for a subsequent violation is \$5,000.

007.01N To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the

federal act;

007.01N1 Base fine for a first violation is \$1,000.

007.01N2 Base fine for a subsequent violation is \$4,000.

007.01O To use any pesticide which is under an experimental-use permit which is contrary to the provisions of such permit;

007.01O1 Base fine for a first violation is \$2,000.

007.01O2 Base fine for a subsequent violation is \$5,000.

007.01P To fail to follow any order of the department;

007.01P1 Base fine for a first violation is \$2,000.

007.01P2 Base fine for a subsequent violation is \$5,000.

007.01Q To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act; and

007.01Q1 Base fine for a first violation is \$2,000.

007.01Q2 Base fine for a subsequent violation is \$5,000.

007.01R To violate any other provision of the act.

007.01R1 Base fine for a first violation is \$1,000.

007.01R2 Base fine for a subsequent violation is \$2,000.

007.02 Gravity adjustment criteria. The base administrative fine may be changed by considering the gravity of harm of the violation and the gravity of misconduct of the person committing the violation. The specific numerical value will be assigned to each category as set forth in the following charts:

007.02A Gravity of harm.

Violation	Circumstances	Value
Pesticide	Toxicity - Category I pesticides, signal word "DANGER", restricted use pesticides (RUP's).	2
	General use pesticides, toxicity - Category II, signal word "WARNING", and Categories III and IV, signal word "CAUTION."	1
Harm to Human Health	Actual serious or widespread harm to human health.	5
	Potential serious or widespread harm to human health.	3
	Harm to human health is unknown.	2
	Minor potential or actual harm to human health, neither serious nor widespread.	1

Environmental Harm	Actual serious or widespread harm to the environment (e.g., crops, water, livestock, wildlife, wilderness, or other sensitive natural areas).	5
	Potential serious or widespread harm to the environment.	3
	Harm to environment is unknown.	2
	Minor potential or actual harm to the environment, neither widespread nor substantial.	1

007.02B Gravity of misconduct.

Violation	Circumstances	Value

Compliance History	Two or more prior violations of FIFRA or state law, either similar or unrelated to current violation.	3
	One prior violation of FIFRA or state law similar to current violation.	2
	One prior violation of FIFRA or state law unrelated to current violation.	1
	No prior FIFRA or Nebraska Pesticide Act violation.	0
Culpability	Knowing or willful violation of the statute. Knowledge of the general hazardousness of the action.	4
	Violation resulting from faulty, careless, or negligent action.	3
	Culpability unknown.	2
	Violation was neither knowing or willful and did not result from faulty, careless, or negligent action.	0
Remedial Efforts	Violator voluntarily notified NDA of incident or violation.	-1
	Violator instituted steps to correct the violation immediately after discovery of the violation.	

		-2
	Violator immediately notified NDA of incident and instituted steps to correct the violation.	-3
Financial Gain	Noncompliance with Pesticide Act has or would have resulted in significant financial gain for violator.	3
	No financial gain to violator as a result of violation.	0

007.02C To determine the total gravity value, the base fine shall be adjusted based on the total number of points calculated from 007.02A and 007.02B above and multiplying it by the gravity adjustment values.

Adjustments for Gravity

Total Gravity Value	Adjustment
3 or below	25% of base value
4-6	50% of base value
7-10	75% of base value
11 or above	100% of base value

007.03 To determine the actual administrative fine, the fine as determined in 007.02C above shall be multiplied by the appropriate value corresponding with the size of business criteria set forth below. In determining the amount of any fine, there shall be a rebuttal presumption

that the gross revenue from all sources of any violator is over \$800,000.

Size of Business Criteria

Gross Revenue From All Sources	Multiplier Value
\$0-200,000	0.2
\$200,001-400,000	0.4
\$400,001-600,000	0.6
\$600,001-800,000	0.8
over \$800,001	1.0

007.04 Nothing in these regulations shall prevent the department from entering into a settlement agreement with any person violating the Pesticide Act or the rules and regulations adopted and promulgated under it which specifies a different fine or penalty than specified in the act or regulation.

008 Worker Protection Standards (Arid REI extension). The counties listed below have an annual average rainfall of 25 inches or more and are not subject to the arid Restricted Entry Interval (REI) extension for organophosphate or methylcarbamate pesticides:

Adams

Antelope

Boone

Burt

Butler

Cass

Cedar

Clay

Colfax

Cuming

Dakota

Dixon

Dodge

Douglas

Fillmore

Franklin

Gage

Hall

Hamilton

Jefferson

Johnson

Kearney

Knox

Lancaster

Madison

Merrick

Nance

Nemaha

Nuckolls

Otoe

Pawnee

Pierce

Platte

Polk

Richardson

Saline

Sarpy

Saunders

Seward

Stanton

Thayer

Thurston

Washington

Wayne

Webster

York

009 Emergency Exemption Permit.

009.01 Upon satisfaction of the requirements of the Pesticide Act and the rules and regulations adopted and promulgated under it by an applicant, the department may register a pesticide under an emergency exemption. Such registrant shall be issued a permit to distribute the pesticide for the specific usages outlined on the permit. Such registrations shall be contingent upon continued compliance by the registrant with the provisions of the act and the rules and regulations.

009.02 The registrant of an emergency exemption pesticide shall ensure that such pesticide shall be distributed only to those persons who have obtained a permit to distribute such pesticide in Nebraska.

009.03 Application. Any person wishing to distribute, including those persons only distributing to other dealers, an emergency exemption pesticide may make application to the department for a permit on forms provided by the department. Only persons holding such permits shall be allowed to distribute the pesticide for such use.

009.04 Issuance. The department may issue a permit to applicants who have completed the application and who have agreed to abide by the conditions set out in 009.05 below. Permits shall be valid until the dates specified on the permit, unless sooner revoked by the department for a violation by the holder of the provisions of the act or the rules and regulations.

009.05 Conditions. All permits issued under 009.04 above shall be conditioned as followed:

009.05A Only products registered with the department pursuant to this rule and regulation shall be distributed for use and only for the uses identified on the permit.

009.05B Distribution shall only be made to persons holding an emergency exemption permit.

009.05C No distribution shall in any way violate the labeling restrictions of the product, which labeling shall be provided with the distribution of the pesticide.

009.05D No distribution shall be made to any person whom the department has determined has violated the provisions of this rule and regulation or has violated the provisions of any emergency exemption permit issued to that person.

009.05E Persons distributing pesticides under an emergency exemption permit shall maintain records of distributions for at least three (3) years following the effective date of the distribution. Such records shall be the same as those required for a restricted use pesticide as set forth in 006.03 above. In addition, a final report shall be submitted to the Department of Agriculture of all distributions of the pesticide within 30 days following the end of the season.

009.06 Application. The department shall be informed by any person that is aware of any adverse affects resulting from the use of the pesticide.

010 Annotation. Neb. Rev. Stat. §§2-2622 to 2-2655 (Cum. Supp. 1996).

TITLE 25 - DEPARTMENT OF AGRICULTURE, BUREAU OF PLANT INDUSTRY

Chapter 3 - NEBRASKA COMMERCIAL FEED REGULATIONS

001 DEFINITIONS

001.01 The definitions of terms contained in the Commercial Feed Act shall apply to such terms when used in this regulation.

001.02 The official feed terms, official and tentative definitions of feed ingredients, and statements for uniform interpretation and policy as established in the "1991 Official Publication of the Association of American Feed Control Officials Incorporated," which is hereby adopted by reference, shall apply when used in this regulation, unless the director determines that the health or safety of humans or livestock may be endangered thereby. Those portions of the uniform publication which are hereby adopted by reference shall be attached hereto as an appendix and be made available upon request at the office of the bureau.

001.03 The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of section 54-849(2) of the act: raw meat, hay, straw, stover, silages, cobs, husks, and hulls when unground, not mixed or intermixed with other materials, and not adulterated within the meaning of section 54-854(1) of the act. Hay in cubed form shall also be exempt when not adulterated as set forth above, intermixed, or mixed with any materials other than water.

001.04 Individual chemical compounds and substances not adulterated, intermixed, or mixed with other materials are hereby declared exempt from the definition of commercial feed under the provisions of section 54-849(2) of the act. It has been determined that these products meet the following criteria:

001.04A There is an adopted Association of American Feed Control Officials (hereafter referred to as AAFCO) definition for the product;

001.04B The product is either "Generally Recognized as Safe" (GRAS) or is not covered by a specific Food and Drug Administration (FDA) Regulation;

001.04C The product is either a natural occurring product of relatively uniform chemical composition or is manufactured to meet the AAFCO definition of the product;

001.04D The use of the product in the feed industry constitutes a minor portion of its total industrial use;

001.04E The product contains small quantities of additives, which are intended to impart special desirable characteristics; or

001.04F There is no need or problem of control of this product.

001.05 OFFICIAL PUBLICATION shall mean the 1991 Official Publication of the Association of American Feed Control Officials Incorporated.

002 SPECIFIC REQUIREMENTS RELATING TO THE LABELING OF COMMERCIAL FEEDS

002.01 Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this regulation on the principal display panel of the product and in the following general format:

002.01A Net Weight.

002.01B Product name and brand name, if any, under which the commercial feed is distributed.

002.01C If a drug is used:

002.01C1 The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name;

002.01C2 The purpose of medication;

002.01C3 An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with 25 NAC 3-004.04; and

002.01C4 The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by 25 NAC 3-006 and 007, appear elsewhere on the label.

002.01D The guarantee analysis of the commercial feed as required under the provisions of section 54-852(1)(c) of the act include the following items, unless exempted in 002.01D9 of this part, and in the order listed:

002.01D1 Minimum percentage of crude protein;

002.01D2 Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in 25 NAC 3-004.05;

002.01D3 Minimum percentage of crude fat;

002.01D4 Maximum percentage of crude fiber;

002.01D5 Minerals, to include, in the following order:

002.01D5a Minimum and maximum percentages of calcium (Ca),

002.01D5b Minimum percentages of phosphorus (P),

002.01D5c Minimum and maximum percentages of salt (NaCl), and

002.01D5d Other minerals;

002.01D6 Vitamins in such terms as specified in 25 NAC 3-004.03.

002.01D7 Total sugars as invert on dried molasses products or products being distributed primarily for their sugar content; and

002.01D8 Viable lactic acid producing microorganisms for use in silages in terms specified in 25 NAC 3-004.07.

002.01D9 Exemptions:

002.01D9a Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than 6½ percent of Calcium, Phosphorus, Sodium and Chloride;

002.01D9b Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement;

002.01D9c Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other

than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses; or

002.01D9d Guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, and no specific label claims are made.

002.01E Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate ingredient statements as provided under the provisions of section 54-852(1)(d) of the act shall be labeled as follows:

002.01E1 The name of each feed ingredient as defined in the official publication, common or usual name, or one approved by the director.

002.01E2 Collective terms for the grouping of feed ingredients as defined in the official publication may be used on the label in lieu of the individual feed ingredients; except:

002.01E2a When a collective term for a group of feed ingredients is used on the label, individual feed ingredients within that group shall not be listed on the label; and

002.01E2b The manufacturer shall provide the director, upon request, with a list of individual feed ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

002.01F Name and principal mailing address of the manufacturer or person responsible for distributing the commercial feed. The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory.

002.01G The information required in section 54-852(1)(a) through (e) of the act shall appear in its entirety on one side of the label or on one side of the container. The information required by section 54-852(1)(f) and (g) of the act shall be displayed in a prominent place on the label or container but not necessarily on the same side as the above information. When the information required by section 54-852(1)(f) and (g) is placed on a different side of the label or container, it shall be referenced on the front side with a statement such as "See back of label for directions for use." None of the information required by section 54-852 of the act shall be subordinated or obscured by other statements or designs.

002.02 Customer-formula feed shall be accompanied with the information prescribed in this section using labels, invoice, delivery slip, or other shipping document bearing the following information:

002.02A The name and address of the manufacturer;

002.02B The name and address of the purchaser;

002.02C The date of manufacture;

002.02D The customer - formula feed name and brand name if any;

002.02E The product name and net weight of each registered commercial feed and each other feed ingredient used in the mixture;

002.02F The direction for use and precautionary statements as required by 25 NAC 3-006 and 007; and

002.02G If a drug containing product is used:

002.02G1 The purpose of the medication, and

002.02G2 The established name and level of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with 25 NAC 3-004.04.

002.02H A duplicate copy of all the information required in 002.02 above shall be kept by the manufacturer and made available for use by the department for sampling and inspection purposes.

003 SPECIFIC REQUIREMENTS RELATING TO THE BRAND AND PRODUCT NAMES OF FEEDS APPEARING ON COMMERCIAL FEED LABELS

003.01 The brand or product name shall be appropriate for the intended use of the commercial feed and shall not be misleading. If the name indicates the commercial feed is made for a specific use, the character of the commercial feed shall conform therewith. A mixture labeled "Dairy Feed," for example, shall be suitable for that purpose.

003.02 Commercial, registered brand or trade names are not permitted in guarantees or feed ingredient listings and only in the product name of commercial feed produced by or for the firm holding the rights to such a name.

003.03 The name of a commercial feed shall not be derived from one or more feed ingredients of a mixture to the exclusion of other feed ingredients and shall not be one representing any components of a mixture unless all components are included in the name; except, if any feed ingredient or combination of feed ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that feed ingredient or combination of feed ingredients may be used as a part of the brand name or product name if the feed ingredients or combination of feed ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

003.04 The word "protein" shall not be permitted in the product name of a commercial feed that contains added non-protein nitrogen.

003.05 When the product name carries a percentage value, it shall be understood to signify only protein, equivalent protein content, or both, even though it may not explicitly modify the percentage with the word "protein;" except, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the consumer.

003.06 Single ingredient commercial feed shall have a product name in accordance with the designated definition of feed ingredients as recognized by AAFCO in its official publication unless the director determines that the health or safety of humans or livestock may be endangered thereby.

003.07 The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a commercial feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in 25 NAC 3-004.03.

003.08 The term "mineralized" shall not be used in the name of a commercial feed except for "TRACE MINERALIZED SALT." When so used, the product shall contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

003.09 The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products are derived unless the meat and meat by-products are made from cattle, swine, sheep or goats.

004 SPECIFIC REQUIREMENTS RELATING TO THE EXPRESSION OF GUARANTEES ON COMMERCIAL FEED LABELS

004.01 The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees (when required) shall be in terms of percentage.

004.02 Commercial feed containing 6½ percent or more Calcium, Phosphorus, Sodium and Chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element. When calcium, salt guarantees, or both, are given in the guaranteed analysis, such shall be stated and conform to the following:

004.02A When the minimum is 5.0 percent or less, the maximum shall not exceed the minimum by more than one percentage point.

004.02B When the minimum is above 5.0 percent, the maximum shall not exceed the minimum by more than 20 percent and in no case shall the maximum exceed the minimum by more than 5 percentage points.

004.03 Guarantees for minimum vitamin content of commercial feeds shall be listed in the order specified and are stated in milligrams per pound unless otherwise specified:

004.03A Vitamin A, other than precursors of vitamin A, in International Units per pound;

004.03B Vitamin D-3 in products offered for poultry feeding, in International Chick Units per pound;

004.03C Vitamin D for other uses, International Units per pound;

004.03D Vitamin E, in International Units per pound;

004.03E Concentrated oils and feed additive premixes containing vitamins A, D, E or a combination thereof, may at the option of the distributor be stated in units per gram instead of units per pound;

004.03F Vitamin B-12, in milligrams per pound or micrograms per pound; and

004.03G All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione; riboflavin; d-pantothenic acid; thiamine; niacin; vitamin B-6; folic acid, choline, biotin, inositol; p-amino benzoic acid; ascorbic acid; and carotene.

004.04 Guarantees for drugs shall be stated in terms of percent by weight, except:

004.04A Antibiotics, present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed;

004.04B Antibiotics present at 2,000 or more grams per ton (total) of commercial feed, shall be stated in grams per pound of commercial feed;

004.04C Labels for commercial feed containing growth promotion levels of antibiotics, feed efficiency levels of antibiotics or both, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Federal Food Additive Regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic; and

004.04D The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

004.05 Commercial feed containing any added non-protein nitrogen shall be labeled as follows:

004.05A For ruminants:

004.05A1 Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5 percent protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum,_%

(This includes not more than % equivalent protein from non-protein nitrogen.);

004.05A2 Mixed feed concentrates and supplements containing less than 5 percent protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, %; and

004.05A3 Ingredient sources of non-protein nitrogen such as Urea, Di-Ammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined in the official publication shall be guaranteed as follows:

Nitrogen, minimum,_%

Equivalent Crude Protein from Non-Protein Nitrogen, minimum,_%.

004.05B For non-ruminants:

004.05B1 Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, shall be labeled as follows:

Crude protein, minimum %

[This includes not more than % equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended)] and

004.05B2 Premixes, concentrates or supplements intended for non-ruminants containing more than 1.25 percent equivalent crude protein from all forms of non-protein nitrogen shall contain adequate directions for use and a prominent statement: WARNING: This feed shall be used only in accordance with directions furnished on the label.

004.06 Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

004.07 Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams, or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance; and

004.08 Labels of liquid commercial feed shall state the maximum moisture content in the guaranteed analysis statement.

005 SPECIFIC REQUIREMENTS RELATING TO THE USE OF FEED INGREDIENTS AND THE LABELING OF FEED INGREDIENTS ON A COMMERCIAL FEED LABEL

005.01 The name of each feed ingredient or collective term for the grouping of feed ingredients, when required to be listed, shall be the name as defined in the official publication, the common or usual name, or one approved by the director;

005.02 The name of each feed ingredient shall be shown in letters or type of the same size;

005.03 No reference to quality or grade of a feed ingredient shall appear in the ingredient statement of a commercial feed;

005.04 The term "dehydrated" may precede the name of any product that has been artificially dried;

005.05 A single ingredient product defined in the official publication is not required to have an ingredient statement;

005.06 Tentative definitions for feed ingredients shall not be used until adopted in the official publication, unless no official definition exists or the feed ingredient has a common accepted name that requires no definition, (i.e. sugar); and

005.07 When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007 percent iodine, uniformly distributed.

006 SPECIFIC REQUIREMENTS RELATING TO THE DIRECTIONS FOR USE AND PRECAUTIONARY STATEMENTS APPEARING ON COMMERCIAL FEED LABELS

006.01 Directions for use and precautionary statements on the labeling of all commercial feed and customer-formula feed containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:

006.01A Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and,

006.01B Include, but not be limited to, all information described by all applicable regulations under the Federal Food, Drug and Cosmetic

Act.

006.02 Adequate directions for use and precautionary statements are required for commercial feed containing non-protein nitrogen as specified in 25 NAC 3-007.

006.03 Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feed distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

007 SPECIFIC REQUIREMENTS RELATING TO THE USE AND THE LABELING OF COMMERCIAL FEED THAT CONTAIN NON-PROTEIN NITROGEN

007.01 Urea and other non-protein nitrogen products defined in the official publication are acceptable feed ingredients only in commercial feed for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75 percent of equivalent crude protein from all forms of non-protein nitrogen or if the equivalent crude protein from all forms of non-protein nitrogen exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of commercial feed and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the caution statement shall be in type of such size so placed on the label that they shall be read and understood by ordinary persons under customary conditions of purchase and use.

007.02 Non-protein nitrogen defined in the official publication, when so indicated, are acceptable ingredients in commercial feed distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25 percent of the total daily ration.

007.03 On labels such as those for medicated feeds which bear adequate feeding directions, warning statements, or both, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.

008 SPECIFIC REQUIREMENTS RELATING TO THE USE OF DRUG ADDITIVES AND COMMERCIAL FEED ADDITIVES

008.01 Prior to approval of a registration application or approval of a label for commercial feed which contain additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

008.02 Satisfactory evidence of safety and efficacy of a commercial feed may be:

008.02A When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for

such use, or

008.02B When the commercial feed is itself a drug as defined in section 54-849(8) of the act and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C. 360(b).

009 SPECIFIC REQUIREMENTS RELATING TO THE USE OF ADULTERANTS IN COMMERCIAL FEED

009.01 For the purpose of section 54-854(1)(a) of the act, the terms "poisonous or deleterious substances" include but are not limited to the following:

009.01A Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20 percent for breeding and dairy cattle; 0.30 percent for slaughter cattle; 0.30 percent for sheep; 0.35 percent for lambs; 0.45 percent for swine; and 0.60 percent for poultry;

009.01B Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: 0.004 percent for breeding and dairy cattle; 0.009 percent for slaughter cattle; 0.006 percent for sheep; 0.01 percent for lambs; 0.015 percent for swine and 0.03 percent for poultry;

009.01C Fluorine bearing ingredients incorporated in any commercial feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of 50 milligrams of Fluorine per 100 pounds of body weight;

009.01D Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents; and

009.01E Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on commercial feed or feed ingredients which are considered or reported to be a significant source of vitamin B1 (Thiamine).

009.02 All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or distributed as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds so that the finished product contains no viable prohibited weed seeds and not more than 4.5 viable restricted weed seeds per pound.

010 REGULATIONS REGARDING THE USE OF GOOD MANUFACTURING PRACTICES IN THE PRODUCTION OF COMMERCIAL FEED

010.01 For the purposes of enforcement of section 54-854(4) of the act the director adopts the following as current good manufacturing practices:

010.01A The regulations prescribing good manufacturing practices for medicated feeds as published in 21 C.F.R. 225.1 through 225.202; and

010.01B The regulations prescribing good manufacturing practices for medicated premixes as published in 21 C.F.R. 226.1 through 226.115.

011 REGULATIONS REGARDING THE RATE OF INSPECTION FEES PAID ON COMMERCIAL FEED

011.01 The rate of inspection fees on commercial feed distributed in Nebraska, as authorized by Neb. Rev. Stat. §54-856 shall be:

011.01A Except as provided in 011.01B below, there shall be paid to the director an inspection fee at the rate of ten cents per ton on all commercial feed distributed in Nebraska.

011.01B In the case of a commercial feed which is distributed in the state only in packages of ten pounds or less, an annual fee of twenty-five dollars shall be paid in lieu of the inspection fee.

011.02 The fees fixed under 25 NAC 3-011.01, above, shall apply to all products distributed on and after January 1, 1987.

012 ADMINISTRATION These regulations shall be administered by the Department of Agriculture's Bureau of Plant Industry, located in the State Office Building, fourth floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is (402) 471-2394.

013 ANNOTATION. Neb. Rev. Stat. §§54-847 to 54-863 (Reissue 1988).

TITLE 25 - DEPARTMENT OF AGRICULTURE, BUREAU OF PLANT INDUSTRY

Chapter 6 - COMMERCIAL FERTILIZER AND SOIL CONDITIONER INSPECTION

FEES

001 Purpose. The purposes of this rule are to fix the inspection fees on commercial fertilizers and soil conditioners distributed in Nebraska, as authorized by Neb. Rev. Stat. §81-2,162.06.

002 Commercial Fertilizers and Soil Conditioners. There shall be paid to the Director of Agriculture for all commercial fertilizers and soil conditioners distributed in Nebraska to the ultimate user an inspection fee at the rate of ten cents (10¢) per ton.

003 Effective Date. The fees fixed under 25 NAC 6-002 above, shall apply to all products distributed on and after January 1, 1982, which fees shall be due on and after July 31, 1982.

004 Annotation. Neb. Rev. Stat. §§81-2,162.01 to 81-2,162.27.

NEBRASKA ADMINISTRATIVE CODE

LAST DATE AMENDED: February 6, 1991

TITLE 25 - DEPARTMENT OF AGRICULTURE, BUREAU OF PLANT INDUSTRY

Chapter 7 - NEBRASKA SEED LAW REGULATIONS

001 Different varieties of the same kind of seed, when present in quantities of less than five percent, will be considered as "other crop seed."

002 No agricultural, vegetable, or flower seed which is incapable of being identified by common seed characteristic or which is incorrectly represented as to kind, variety or origin may be sold unless said seed is accompanied by invoice, grower's declaration or suitable labeling information which will insure the identity to be stated. The grower's declaration, if used, shall be of a form to show the above information.

003 All required labels shall be so attached to be clearly discernable, and securely fastened to the container or printed directly thereon, provided however, labels may be used for labeling if they are securely attached to the bag, box or container and when in place, are visible.

003.01 Label forms for agricultural, vegetable, and flower seed.

003.01A The form of label for agricultural seeds, including lawn and turf seeds, shall show the necessary information as stated in the Nebraska Seed Law, such as:

Name of labeler

Address

Lot No.

Variety (or variety not stated) or hybrid

Kind

Pure Seed %

Crop Seed %

Inert Matter %

Coating material % (for seeds that are coated)

Weed Seed %

Germination %

Hard Seed % (for legumes and may be shown if present)

Dormant Seed % (may be shown if present)

Total Germ & Dormant Seed % (may be shown if present)

Total Germ & Hard Seed % (for legumes and may be shown if present)

Name and rate of occurrence of restricted noxious weed seed per pound

TZ Viability % (used only for grasses listed in section 81-2,147.02(2)(i))

Date tested or date of expiration (for lawn and turf seed)

Date inoculant expires (use only on pre-inoculated

legumes)

Origin

Pure Live Seed (PLS) %

003.01B The form of label for vegetable seeds shall show the necessary information as stated in the Nebraska Seed Law, such as:

Name of labeler

Address

Lot number

Variety

Kind

Packed for (year)

Germination % (for seeds that germinate less than the standard and for those seeds packaged in containers other than prepared for home use)

Hard Seed % (if present for seeds that germinate less than the standard and for those seeds packaged in containers other than prepared for home use)

Date tested (for seeds that germinate less than the standard and for those seeds packaged in containers other than prepared for home use)

The words "Below Standard" (for seeds that germinate less than the standard)

Minimum number of seeds (for seeds placed in a medium, mat, tape, or other device)

Name and rate of occurrence of restricted noxious weed seed

003.01C The form of label for flower seeds and wildflower seeds shall show the necessary information as stated in the Nebraska Seed Law,

such as:

003.01C(1) Label information for all flower seeds and wildflower seeds.

Name of labeler

Address

Kind

Variety or statement of type and performance characteristics

Packed for (year)

Germination % (for seeds that germinate less than the standard)

The words "Below Standard" (for seeds that germinate less than the standard)

Minimum number of seeds (for seeds placed in a medium, mat, tape, or other device)

003.01C(2) Additional label information required for seeds in containers other than packets for home use:

Pure seed %

Lot number

Weed seed %

Name and rate of occurrence of restricted noxious weed seed

Test date

Germination %

Hard seed % (if present)

003.02 All agricultural, vegetable, or flower seed which has been treated with any substance which is harmful in the quantity remaining in the seed after treatment, to humans or to vertebrate animals, shall be labeled or tagged with a caution statement in eight point type or larger in the following manner:

CAUTION -- TREATED SEED

DO NOT USE FOR FOOD, FEED OR OIL

PURPOSES

003.03 All agricultural and vegetable seed treated with mercurial or similarly toxic substance, shall include in red letters on a background of distinctly contrasting color a statement, such as "This seed has been treated with POISON," "Treated with POISON," "POISON treated," or "POISON." The word "POISON," shall appear in type no smaller than eight-point type, and shall bear a skull and crossbones. Substances considered similar in toxicity to mercurials shall be those with an oral LD₅₀ up to and including 50 mg/kg, an inhalation LD₅₀ up to and including .2 mg/liter, or a dermal LD₅₀ up to and including 200 mg/kg.

003.04 The caution and process statements may be placed upon the kind, variety and germination tag or upon the manufacturer's tag if adequate space permits. All labeling and tags required to contain the caution and process information of this paragraph shall be approved as to form and content by the Department and copies of the Department approval shall be available at all times to inspectors upon request.

003.05 Disclaimers, nonwarranties or limited warranties may be printed or stenciled to all tags, labels, invoices or other required labeling provided they do not represent direct or indirect modifications or denials of caution and process statements and provided further that they do not render the required information thereon difficult to read by overprint, crowding or print style which distracts from the required labeling information.

003.06 The requirements of section 81-2,147.02(7)(a)(i) and (8)(a) of the Nebraska Seed Law which specify that flower seeds shall be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed in these regulations shall be met as follows:

003.06A Seeds of plants grown primarily for their blooms shall be labeled as follows:

003.06A(1) Seeds of a single named variety shall be labeled by the kind and variety, for example "Marigold, Butterball."

003.06A(2) Seeds of a single type and color for which there is no specific variety name shall be labeled by the type of plant and, if significant, the type and color of bloom, for example "Scabiosa, Tall, Large Flowered, Double, Pink."

003.06A(3) Seeds of an assortment or mixture of colors or varieties of a single kind shall be labeled by the kind name and the type of plant and, if significant, by the type or types of bloom. In addition, it shall be clearly labeled as either mixed or assorted, for example "Marigold, Dwarf Double French, Mixed Colors."

003.06B Seeds consisting of an assortment or mixture of kinds or kinds and varieties shall be clearly labeled that the seed is assorted or mixed and the specific use of the assortment or mixture shall be indicated, for example "Cut Flower Mixture," or "Rock Garden Mixture." Such statements as "General Purpose Mixture" or "Wonder Mixture" or any other statement which fails to indicate the specific use of the seed shall not be considered as meeting the requirements of this provision.

003.06C Containers that have more than 3 grams of seed shall list the kind or kind and variety of each component that is more than 5.0% of the total content by weight in the order of its predominance and shall list the percentage by weight of each component. Components of 5.0% or less shall be listed, but need not be in order of predominance. A single percentage, by weight, shall be given for these components. If no component of a mixture is more than 5% of the total content, the statement "No component in excess of 5%" may be used. Containers that have 3 grams of seed or less shall list the components without giving the percentage by weight. Such listing need not be in order of predominance.

003.07 The kinds of flower seeds listed in 004.02 are those for which standard testing procedures have been prescribed and which are required to be labeled in accordance with the germination labeling provisions of section 81-2,147.02(7)(b) and (8)(h) of the Nebraska Seed Law and these regulations.

004 Germination standards for vegetable and flower seeds.

004.01 The minimum allowable germination standards for vegetable or garden seeds, including hard seeds, as prescribed in section 81-2,147.02(5), shall be as follows:

<u>Kind</u>	<u>Percent</u>	<u>Kind</u>	<u>Percent</u>
Artichoke	60	Dandelion	60
Asparagus	70	Eggplant	60
Asparagusbean	75	Endive	70
Bean, garden	70	Kale	75
Bean, lima	70	Kale, Chinese	75

Bean, runner 75	Kohlrabi 75
Beet 65	Leak 60
Broadbean 75	Lettuce 80
Broccoli 75	Muskmelon 75
Brussel sprouts 70	Mustard, India 75
Burdock, great 60	Mustard, spinach 75
Cabbage 75	Okra 50
Cabbage, tronchuda 75	Onion 70
Cantaloupe (see muskmelon)	Onion, Welsh 70
Cardoon 60	Pak-choi 75
Carrot 55	Parsley 60
Cauliflower 75	Parsnip 60
Celeriac 55	Pea 80
Celery 55	Pepper 55
Chard, Swiss 65	Pumpkin 75
Chicory 65	Radish 75
Chinese cabbage 75	Rhubarb 60
Chives 50	Rutabaga 75

Citron 65	Salsify 75
Collards 80	Sorrel 65
Corn, sweet 75	Soybean 75
Cornsalad 70	Spinach 60
Cowpea 75	Spinach, New Zealand 60
Cress, garden 75	Squash 75
Cress, upland 60	Tomato 75
Cress, water 40	Tomato, husk 50
Cucumber 80	Turnip 80
	Watermelon 70
	All other kinds 50

004.02 The minimum allowable germination standards for flower seeds, as prescribed in section 81-2,147.02(7) and (8) shall be as listed below. For the kinds of seeds marked with an asterisk (*), the percentage is the total of percentage germination and percentage of hard or dormant seed. A mixture of kinds of flower seeds shall be considered to be below standard if the germination of any kind or combination of kinds that constitutes twenty-five percent (25%) or more of the mixture, by number, is below standard for the kind or kinds involved.

Kind Percentage

Achillea (The Pearl) - *Achillea ptarmica* 50

Adams needle - *Yucca filamentosa* 50

African daisy - *Dimorphoteca aurantiaca* 55

African lilac daisy - *Arctotis stoechadifolia* 50

African violet - *Saintpaulia* species 30

Ageratum - *Ageratum mexicanum* 60

Agrostemma (rose campion) - *Agrostemma coronaria* 65

Alyssum - *Alyssum compactum*, *A. maritimum*,

A. procumbens, *A. saxatile* 60

Amaranthus - *Amaranthus* species 65

Anagalis (pimpernel) - *Anagalis arvensis*,

Anagalis coerulia, *Anagalis grandiflora* 60

Anchusa - Two genera species:

Cape bugloss - *Anchusa capensis*

Italian bugloss - *Anchusa azura*

Forget-me-not - *Brunnera macrophylla* 50

Anemone - *Anemone coronaria*, *A. pulsatilla* 55

Angel's trumpet - *Datura arborea* 60

Arabis - *Arabis alpina* 60

Arctotis (African lilac daisy) - *Arctotis grandis* 45

Armeria - *Armeria formosa* 55

Asparagus, fern - *Asparagus plumosus* 50

Asparagus, sprenger - *Asparagus sprengeri* 55

Aster, China - *Callistephus chinensis*; except
pompom, Powderpuff, and Princess types 55

Aubrieta - *Aubrieta deltoides* 45

Baby smilax - *Asparagus asparagoides* 25

Balloonvine - *Cardiospermum halicacebum* 50

Balsam - *Impatiens balsamina* 70

Beach evening primrose - *Camissonia*

cheiranthifolia (*oenothera cheiranthifolia*) 50

Begonia - (Begonia fibrous rooted) 60

Begonia - (Begonia tuberous rooted) 50

Bells of Ireland - *Molucella laevis* 60

Bellflower (Bluebells of Scotland) -

Campanula rotundifolia 50

Bergamot - *Monarda species* 50

Black-eyed Susan - *Rudbeckia hirta* 50

Brachycome (Swan river daisy) - *Brachycome*

iberidifolia 60

Bupthalam (sunwheel) - Bupthalam salicifolium 60

Buttercup - Ranunculus species 50

Butterfly milkweed - Asclepias tuberosa 50

Cactus - Cactaceae 50

Calceolaria - Calceolaria species 60

Calendula - Calendula officinalis 65

Californica poppy - Eschscholtzia californica 60

Calliopsis - Coreopsis bicolor, C. Drummondi,

C. elegans 65

Camomile, golden - Anthemis tinctoria 50

Camomile, St. John's - Anthemis sancti - johannis 50

Campanula:

Canterbury bells - Campanula medium 60

Cup and saucer bellflower - Campanula medium

calycanthema 60

Carpathian bellflower - Campanula carpatica 50

Peach bellflower - Campanula persicifolia 50

Campion, clammy - *Lychnis viscaria* 50

Candytuft, annual - *Iberis gibraltarica*, I.

umbellata 65

Candytuft, perennial - *Iberis amara*, I.

sempervirens 55

*Castor bean - *Ricinus communis* 60

Cathedral bells - *Cobaea scandens* 65

Celosia - *Celosia argentea* 65

Centaurea:

Basket flower - *Centaurea americana*

Cornflower - *C. cyanus*

Dusty Miller - *C. Candidissima*

Royal centaurea - *C. imperialis*

Sweet sultan - *C. moschata*

Velvet centaurea - *C. gymnocarpa* 60

Cerastium (snow-in-summer) *Cerastium biebersteini*

and *C. tomentosum* 65

Chinese forget-me-not - *Cynoglossum amabile* 55

Chinese Houses - *Collinsia heterophylla* 50

Chrysanthemum, annual - *Chrysanthemum carinatum*,

C. coronarium, *C. segetum* 40

Cineraria - *Senecio cruentus* 60

Clarkia - *Clarkia elegans* 65

Cleome - *Cleome gigantea* 65

Coleus - *Coleus blumei* 65

Columbine - *Aquilegia species* 50

Coral bells - *Heuchera sanguinea* 55

Coreopsis, perennial - *Coreopsis lanceolata* 40

Corn, ornamental - *Zea mays* 75

Cosmos:

Sensation, mammoth, and crested types -

Cosmos bipinnatus Klondyke type - *C. sulphureus* 65

Crossandra - *Crossandra infundibuliformis* 50

Cyclamen - *Cyclamen africanum* 50

Dahlia - *Dahlia species* 55

Dames rocket - *Hesperis matronalis* 50

Daylily - *Hemerocallis* species 45

Delphinium, perennial:

Belladonna and bellamosum types

Cardinal larkspur - *Delphinium cardinale*

Chinensis types

Pacific giant, gold medal and other hybrids

of *D. elatum* 55

Devils claws - *Proboscidea louisianica* 50

Dianthus:

Carnation - *Dianthus caryophyllus* 60

China pinks - *Dianthus chinensis*, *heddewigi*,

heddensis 70

Grass pinks - *Dianthus plumarius* 60

Maiden pinks - *Dianthus deltoides* 60

Sweet William - *Dianthus barbatus* 70

Sweet Wivelsfield - *Dianthus allwoodi* 60

Didiscus - (blue lace flower) - *Didiscus coerulea* 65

Dittany - *Dictamnus albus* 50

Doronicum (leopard's bane) - *Doronicum caucasicum* 60

Dracaena - *Dracaena indivisa* 55

Dragon tree - *Dracaena draco* 40

Edelweiss - *Leontopodium alpinum* 50

English daisy - *Bellis perennis* 55

Euphorbia, painted - *Euphorbia heterophylla* 50

Evening primrose - *Oenothera biennis*;

O. argillicola 50

Everlasting pea - *Lathyrus latifolius* 50

Flame violet - *Episcia species* 50

Flax:

Golden flax, *Linum flavum*

Flowering flax, *L. grandiflorum*

Perennial flax, *L. perenne* 60

Fleece flower - *Polygonum capitatum* 50

Flowering maple - *Abutilon species* 35

Foxglove - *Digitalis species* 60

Fuschia - *Fuschia species* 50

Gaillardia:

Annual - Gaillardia pulchella, G. picta

Perennial - G. grandiflora 45

Gasplant - Distamus albus 50

Gayfeather (blazing star) - Liatris species 50

Gazania, pied - Gazania rigens 50

Geranium - Geranium species 50

Gerbera (transvaal daisy) - Gerbera jamesoni 60

German violet - Exacum affine 50

Geum - Geum species 55

Gilia - Gilia species 65

Gladiolus - Gladiolus species 50

Globe amaranth - Gomphrena globosa 50

Globethistle, small - Echinops ritro 50

Gloriosa daisy (rudbeckia) - Echinacea purpurea
and Rudbeckia hirta 60

Gloxinia - Sinningia speciosa 40

Godetia - Godetia amoena, G. grandiflora 65

Goldmoss sedum - *Sedum acre* 50

Gourds:

Yellow flowered - *Cucurbita pepo*

White flowered - *Lagenaria siceraria*

Dishcloth - *Luffa cylindrica* 70

Gypsophila:

Annual baby's breath - *Gypsophila elegans*

Perennial baby's breath - *G. paniculata*,

G. pacifica, *G. repens* 70

Helenium - *Helenium autumnale* 40

Helichrysum (strawflower) - *Helichrysum*

bracteatum 60

Heliopsis - *Heliopsis scabra* 55

Heliotrope - *Heliotropium* species 35

Helipterum (acroclinium) - *Helipterum roseum* 60

Hens and chickens - *Sempervivum* species 50

Herb treemallow - *Lavatera trimestris* 50

Hesperis (sweet rocket) - *Hesperis matronalis* 65

Hibiscus - Hibiscus species 60

*Hollyhock - Althea rosea 65

Hunnemania (Mexican tulip poppy) - Hunnemannia
fumariaefolia 60

*Hyacinth bean - Lablab purpureus 70

Impatiens - Impatiens holstii, I. sultani 55

*Ipomea:

Cypress vine - Ipomea guamoclit

Moonflower - I. noctiflora

Morning glories, cardinal climber, hearts and

honey vine - Ipomea species 75

Japanese Iris - Iris kaempferi 50

Jasmine primrose - Oenothera pallida 50

Jerusalem cross (maltese cross) - Lychnis
chalcedonica 70

Job's tears - Coix lacrymajobi 70

Jupiter's beard - Centranthus ruber 50

Kalanchoe - Kalanchoe blossfeldiana 50

Kochia - *Kochia childsii* 55

Larkspur, annual - *Delphinium ajacis* 60

Lamb's ear - *Stachys byzantina* 50

Lantana - *Lantana camara*, *L. hybrida* 35

Lemon mint - *Monarda citriodora* 50

Lilium (regal lily) - *Lilium regale* 50

Linaria - *Linaria* species 65

Livingstone daisy (iceplant) - *Dorotheanthus*

belliiformis 50

Lobelia, annual - *Lobelia erinus* 65

Lunaria, annual - *Lunaria annua* 65

*Lupine - *Lupinus* species 65

Maltese cross - *Lychnis coronaria* 50

Marigold - *Tagetes* species 65

Marvel of Peru (four o'clock) - *Marabalis jalapa* 60

Matricaria (feverfew) - *Matricaria* species 60

Mignonette - *Reseda odorata* 55

Monarch daisy - *Veridium fastuosum* 50

Mullein pink - *Lynchnis coronaria* 50

Myosotis - *Myosotis alpestris*, *M. oblongata*,

M. palustris 50

Nasturtium - *Tropaeolum* species 60

Nemesia - *Nemesia* species 65

Nemophila - *Nemophila insignis* 70

Nemophila, spotted - *Nemophila maculata* 60

New England aster - *Aster novae-angliae* 50

Nicotiana - *Nicotiana affinis*, *N. sanderae*,

N. sylvestris 65

Nierembergia - *Nierembergia* species 55

Nigella - *Nigella damascena* 55

Oregon fleabane - *Erigeron speciosus* 50

Ozark sundrops - (*Oenothera macrocarpa*, *Oenothera missouriensis*) 50

Pansy - *Viola tricolor* 60

Pearlwort - *Sagina sabulata* 50

Pearly everlasting - *Anaphalis margaritacea* 50

Penstemon - Penstemon barbatus, P. grandiflorus,

P. laevigatus, P. pubescens 60

Peppermint - Mentha piperita 50

Periwinkle - Catharanthus roseus 50

Petunia - Petunia species 45

Phacelia - Phacelia campanularia, P. minor,

P. tanacetifolia 65

Phlox, annual - Phlox drummondii all types

and varieties 55

Physalis - Physalis species 60

Platycodon (balloon flower) - Platycodon

grandiflorum 60

Plumbago, cape - Plumbago capensis 50

Polka-dot plant - Hypoestes phyllostachya 50

Ponytail - Beaucarnea recurvata 40

Poppy:

Shirley poppy - Papaver rhoeas

Iceland poppy - P. nudicaule

Oriental poppy - *P. orientale*

Tulip poppy - *P. glaucum* 60

Portulaca - *Portulaca grandiflora* 55

Prairie coneflower - *Ratibida columnifera* 50

Prairie gentian - *Eustoma grandiflorum* 50

Primula (primrose) - *Primula* species 50

Purple coneflower - *Echinacea purpurea* 50

Pyrethrum (painted daisy) - *Pyrethrum coccineum* 60

Rock rose - *Helianthemum nummularium* 50

Rose champion - *Lycchnis coronaria* 50

Salpiglossis - *Salpiglossis gloxinaeflora*,

S. sinuata 60

Salvia:

Scarlet sage - *Salvia splendens*

Mealycup sage (blue bedder) - *Salvia farinacea* 50

Saponaria - *Saponaria ocymoides*, *S. vaccaria* 60

Scabiosa, annual - *Scabiosa atropurpurea* 50

Scabiosa, perennial - *Scabiosa caucasica* 40

Schizanthus - Schizanthus species 60

*Sensitive plant (mimosa) - Mimosa pudica 65

Shasta daisy - Chrysanthemum maximum,

C. leucanthemum 65

Silk oak - Grevillea robusta 25

Snapdragon - Antirrhinum species 55

Snow-on-the-mountain - Euphorbia marginata 50

Solanum - Solanum species 60

Speedwell, Hungarian - Veronica austriaca 50

Speedwell, spike - Veronica spicata 50

Spiderflower - Cleome hasslerana 50

Statice - Statice sinuata, S. suworonii

(flower heads) 50

Stocks:

Common - Mathiola incana

Evening scented, Mathiola bicornis 65

Sunflower - Helianthus species 70

Sunflower, Inula - Inula grandiflora 50

Sunrose - *Helianthemum* species 30

Swan river daisy - *Brachycome iberidifolia* 50

*Sweet pea, annual and perennial other than
dwarf bush - *Lathyrus odoratus*, *L. latifolius* 75

*Sweet pea, dwarf bush - *Lathyrus odoratus* 65

Sweet sultan - *Amberboa moschata* 50

Sweet William catchfly - *Silene armeria* 50

Tahoka daisy - *Machaeanthra tanacetifolia* 60

Tansy - *Tanacetum vulgare* 50

Texas bluebonnet - *Lupinus subcarneus* 50

Thunbergia - *Thunbergia alata* 60

Tidy tips daisy - *Layia platyglossa* 50

Tiger monkeyflower - *Mimulus hybrids* 50

Torch flower - *Tithonia speciosa* 70

Torenia (wishbone flower) - *Torenia fournieri* 70

Transvaal daisy - *Gerbera jamesoni* 50

Tritoma (torch lily) - *Kniphofia species* 65

Unicorn plant - *Proboscidea louisianica* 50

Verbena, annual - *Verbena hybrida* 35

Vinca - *Vinca rosea* 60

Viola - *Viola cornuta* 55

Virginian stocks - *Malcolmia maritima* 65

Wallflower - *Cheiranthus allioni*;

Erysimum x allionii 65

Willowleaf oxeye - *Buphtalmum salicifolium* 50

Wooly marigold - *Baileya multiradiata* 50

Yarrow - *Achillea millefolium* 50

Yucca (Adam's needle) - *Yucca filamentosa* 50

Zinnia (except *Linearis* and creeping) -

Zinnia angustifolia, *Z. elegans*, *Z. grandiflora*,

Z. gracillima, *Z. haegeana*, *Z. multiflora*,

Z. pumila 65

Zinnia Linearis and creeping - *Zinnia Linearis*,

San vitalia procumbens 50

All other kinds 50

005 Time Period for Germination Tests.

005.01 New germination tests on all agricultural, vegetable, or flower seed shall be obtained on carry-over seed each nine months, except for those seeds as listed in 005.02 which shall be tested each twelve months, and hermetically sealed seed which shall be retested for germination after thirty-six months. For purpose of enforcement of this regulation, the date of the germination test on the label or tag shall be binding upon any person in possession of agricultural or vegetable seed. Following retesting, all seed shall be relabeled to reflect the new germination tests of the seed. The following information shall appear on a label for relabeling seeds in their original containers: (a) the calendar month and year the test was completed to determine such percentage; (b) the same lot designation as on the original labels; (c) the identity of the labeling person if such person is different from the original labeler.

005.02 The following kinds of agricultural seed may be sold within a 12-month period, exclusive of the calendar month in which the germination test was completed as prescribed in section 81-2,147.02(1)(a):

Bluestem, Big	Fescue, Hard	Wheatgrass, Beardless
Bluestem, Little	Fescue, Sheep	Wheatgrass, Crested
Bluestem, Sand	Grama, Blue	Wheatgrass, Intermediate
Bluestem, Yellow	Grama, Sideoats	Wheatgrass, Pubescent
Buffalograss	Indiangrass	Wheatgrass, Slender
Bluegrass, Kentucky	Lovegrass, Sand	Wheatgrass, Streambank
Bentgrass, Colonial	Needlegrass, Green	Wheatgrass, Tall
Bentgrass, Creeping	Orchardgrass	Wheatgrass, Thickspike
Brome, Smooth	Ryegrass, Annual	Wheatgrass, Western
Dropseed, Sand	Ryegrass, Perennial	Wildrye, Canada
Fescue, Red	Sandreed, Prairie	
Fescue, Tall	Switchgrass	
Fescue, Chewings	Timothy	

005.03 For agricultural and vegetable seeds labeled, packaged, and sold in hermetically sealed containers, the 9-month or 12-month limitation of date of test in section 81-2,147.03(1)(a) is extended. The germination test for agricultural and vegetable seeds labeled, packaged, and sold in hermetically sealed containers shall have been completed within a 36-month period exclusive of the calendar month in which the test was completed, if the following conditions are met:

005.03A The seed was packaged within nine months after harvest;

005.03B The container used does not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100 degrees F. with a relative humidity on one side of 90 percent and one the other side of 0.00 percent. Water vapor penetration or WVP is measured by the standards of the National Institute of Standards and Technology as:

WVP = gm. H₂O/24 hr/100 sq. in/100EF/90% RH V.0% RH

005.03C The seed in the container used does not exceed the percentage of moisture, on a wet weight basis, as listed below:

005.03C(1) Agricultural Seeds.

Kind Percent

Beet, field 7.5

Beet, sugar 7.5

Bluegrass, Kentucky 6.0

Clover, crimson 8.0

Fescue, red 8.0

Ryegrass, annual 8.0

Ryegrass, perennial 8.0

All others 6.0

Mixtures of the above 8.0

005.03C(2) Vegetable Seeds.

Kind Percent

Bean, garden 7.0

Bean, lima 7.0

Beet 7.5

Broccoli 5.0

Brussell Sprouts 5.0

Cabbage 5.0

Carrot 7.0

Cauliflower 5.0

Celeriac 7.0

Celery 7.0

Chard, Swiss 7.5

Chinese Cabbage 5.0

Chives 6.5

Collards 5.0

Corn, sweet 8.0

Kind Percent

Leek 6.5

Lettuce 5.5

Muskmelon 6.0

Mustard, India 5.0

Onion 6.5

Onion, Welsh 6.5

Parsley 6.5

Parsnip 6.0

Pea 7.0

Pepper 4.5

Pumpkin 6.0

Radish 5.0

Rutabaga 5.0

Spinach 8.0

Squash 6.0

Cucumber 6.0

Tomato 5.5

Eggplant 6.0

Turnip 5.0

Kale 5.0

Watermelon 6.5

Kohlrabi 5.0

All others 6.0

005.03D The container is conspicuously labeled in not less than eight-point type to indicate:

005.03D(1) That the seed is hermetically sealed;

005.03D(2) That the seed has been preconditioned as to moisture content; and

005.03D(3) The calendar month and year in which the germination test was completed as well as all labeling information required in section 81-2,147.02 of the Nebraska Seed Law.

005.03E The percentage of germination of seed at the time of packaging was equal to or above the standards specified elsewhere in the law;

005.03F Adequate records are kept, giving the percent moisture of the seed at the time of packaging; and

005.03G Hermetically sealed seed is not repackaged and relabeled as hermetically sealed seed unless it meets all conditions for seeds packaged in hermetically sealed containers including 005.03A above.

006 Three enforcement orders to be used in administering the provisions of the law and this rule shall be stop sale orders, relabel to comply orders, and minor violation warning orders. A description of the utilization of each order follows:

006.01 Stop sale orders shall be issued with respect to the following:

006.01A Products found to be outside of tolerance with respect to germination.

006.01B Products found to be outside of tolerance with respect to weed seed and noxious weed seed.

006.01C Products found to be double or more out of tolerance with respect to pure seed, crop seed, inert matter, or coating material.

006.01D Products found to bear an expired test date, date of expiration, or year packed for date.

006.01E Products found to be outside of tolerance with respect to Pure Live Seed (PLS).

006.01F Products labeled by a person in violation of section 81-2,147.10(1) and (2).

006.01G Products not labeled in accordance with section 81-2,147.02.

006.01H Products causing any person to be in violation of section 81-2,147.03.

006.02 Relabel to comply orders shall be issued with respect to the following:

006.02A All products found to be in violation of the labeling provisions of the law, so long as the labeling violations are the only violations found, and so long as the labeling violations are not of a type having an affect on the quality of the seed; or

006.02B Products found to be less than double out of tolerance but more than one-half of one percent out of tolerance with respect to pure seed, crop seed, inert matter, or coating material.

006.03 Minor violation warning orders shall be issued with respect to products found to be less than or equal to one-half of one percent out of tolerance with respect to purity, crop seed, inert matter, or coating material.

006.04 A stop sale order shall mean that the products covered thereby cannot be sold until the order has been officially released. A stop sale order may be released on all agricultural, vegetable, and flower seed upon compliance with the terms of the act. The director may issue a release from a stop sale order when satisfied that:

006.04A The seed has been relabeled to comply with official test findings and a copy of the new label or tag has been furnished the Department, or

006.04B The seed has been reconditioned, an official sample taken, a new official test completed, and labeled with the new official test results, or

006.04C The seed has been returned to the supplier marked, "NOT FOR SALE" or similarly identified as not available to any purchaser by sale, trade, or exchange.

006.05 A relabel to comply order shall specify the relabeling required within 14 days of such order, unless an extension of time is sought and obtained from the Department for good cause shown.

006.06 A minor violation warning order shall not require any specific actions to be taken, but shall constitute notice of deficiencies needing future corrective actions.

007 When agricultural, vegetable, or flower seed is sold in bulk or sold from bulk bins or containers, the seller may supply the purchaser with a printed or written statement in lieu of the attached label or tag. In addition, the printed or written statement shall contain all the required labeling information and caution or process statements required by the Nebraska Seed Law and these regulations promulgated thereunder. In such cases, the seller's liability for labeling and tagging shall cease upon delivery of the seed and written statement.

008 The official methods and tolerances adopted by the Association of Official Seed Analysts in the Journal of Seed Technology, Volume 16, Number 3, Revised 1995, entitled "Rules for Testing Seeds," and not in conflict with the Nebraska Seed Law, shall be the official methods and tolerances of the Nebraska Department of Agriculture for the methods of inspecting, handling and sampling all seeds, the methods of examining, analyzing and testing seed samples in the laboratory and the methods of computing tolerances of purity analyses, germination tests, tetrazolium (TZ) test, and Pure Live Seed (PLS) and rates of occurrence of noxious weed seeds. Section 5.5 of the Rules for Testing Seeds shall be utilized when computing tolerances for percentages of Pure Live Seed (PLS) and tetrazolium (TZ). A copy of this publication is attached hereto as Appendix A and incorporated herein by reference and is hereby adopted and promulgated and may be used.

009 In all sampling conducted by the laboratory, the official report shall include the seed of globe-podded hoary cress (*Hymenophyssa pubescens*), lens-podded hoary cress (*Lepidium draba* var. *repens*), all bursage (*Ambrosia* species), and all morning glory (*Ipomea* species when found in field crop seed) within the definition of prohibited noxious weed seed and the classification shall be as prohibited noxious weed seed. In addition, the following interpretation shall be used:

009.01 The term "dodder" (*Cuscuta* spp.) shall be interpreted as seed of all species of dodder, when found in agricultural seeds.

009.02 The term "wild mustard" (*Brassica* spp.) shall be interpreted as Indian mustard (*Brassica Juncea*), Charlock (*Brassica arvensis*), black mustard (*Brassica nigra*), bird rape (*Brassica campestris*) and all other members of the wild mustard (*Brassica*) species when occurring incidentally in agricultural seeds.

009.03 The term "dock" (*Rumex* spp.) shall be interpreted as curled dock (*Rumex crispus*), smoothleaf dock (*Rumex altissimus*), winged dock (*Rumex venosus*), red sorrel (*Rumex acetocells*), and seed of all other members of the dock (*Rumex*), species which may incidentally occur in agricultural seeds.

010 Service testing categories and fees are as follows:

010.01 Seed Species by Category.

010.01A Category 1: Barley, Flax, Oats, Rye, Sorghum, Sudangrass, Sunflower, Triticale, Wheat, Buckwheat, and Spelt

010.01B Category 2: Field Beans (Dry Edible), Soybeans

010.01C Category 3: Field Corn, Popcorn

010.01D Category 4: Alfalfa, Clovers, Crownvetch, Rape (Canola), Trefoil

010.01E Category 5: Lespedeza, Millet, Vetch, Crambe, Safflower

010.01F Category 6: Bentgrass, Bluegrass, Fescues, Orchardgrass, Redtop, Reed Canarygrass, Ryegrass, Timothy

010.01G Category 7: Wheatgrass spp. (except Western), Wildrye spp., Smooth Brome

010.01H Category 8: Buffalograss, Green Needlegrass^c, Indian Ricegrass, Sand Dropseed, Sand Lovegrass, Switchgrass, Western Wheatgrass, Sugar Beets, Eastern Gamagrass

010.01I Category 9: Blue Grama, Prairie Sandreed, Foxtail spp., Side-Oats Grama

010.01J Category 10^d: Bluestem spp., Indiangrass

010.01K Category 11: Tree and Shrubs, Flowers, Wildflowers, Weeds

010.01L Category 12: Vegetables and Herbs

010.02 Testing fees for categories are as follows:

Tetrazolium

Category Purity^a Germination^a NE Noxious^a Complete^a (TZ)^{a b}

1 \$ 6.00 \$10.00 \$ 4.00 \$18.00 \$15.00

2 \$ 6.00 \$10.00 \$ 2.00 \$16.00 \$15.00

3 \$ 6.00 \$10.00 \$ 2.00 \$16.00 \$15.00

4 \$ 7.00 \$10.00 \$ 5.00 \$20.00 \$15.00

5 \$ 7.00 \$10.00 \$ 4.00 \$19.00 \$15.00

6 \$ 8.00 \$14.00 \$ 5.00 \$23.00 \$18.00

7 \$10.00 \$14.00 \$ 5.00 \$25.00 \$18.00

8 \$ 8.00 \$20.00 \$ 5.00 \$31.00 \$20.00

9 \$23.00 \$23.00 \$ 8.00 \$52.00 \$20.00

10 \$45.00 \$25.00 \$ 8.00 \$75.00 \$20.00

11 \$15/hr. \$15/hr. \$15/hr. \$15/hr. \$15/hr.

12 \$15/hr. \$12.00 \$15/hr. \$15/hr. \$20.00

+ Germination

^a In lieu of the above, all mixtures will be charged at the rate of \$15.00/hour for any separation including purity, NE noxious, or both, plus the germination, TZ or both, cost for each kind. In addition to the above, when samples contain excess foreign material, or are difficult, a charge of \$15.00/hour will be made for the extra examination time required if samples are accepted by the lab for testing.

^b Includes Preliminary Report by fax or mail.

^c Germination tests of Green Needlegrass only = \$25/sample; Complete = \$35/sample

^d Seed caryopses of category 10: Purity = \$15; Germination = \$25; Noxious = \$4; Complete = \$42; TZ = \$20.

010.03 Other tests, fees, and requests, as explained below are as follows:

010.03A Rush. Samples submitted for analysis are normally tested in the order in which they are received. The request for a Rush Test will give that sample first testing priority ahead of other samples received previously except other rush test samples. Extra cost per sample: When regular charge is \$20.00 or less, add \$5.00. When regular charge is over \$20.00, but less than \$40.00, add \$7.00. When regular charge is \$40.00 or more, add one-fourth (25%) of the regular sample charge.

010.03B Examination for Annual Bluegrass (*Poa annua*). Cost: \$15/hr.

010.03C Cold Test (Corn, Soybeans) - Standard germination not included. Cost: \$10.00.

010.03D Soybean Stress Test (Accelerated Aging) - for carryover soybeans, includes standard germination test. Cost: \$20.00. (Complete plus Stress Test: \$26.00).

010.03E All States Noxious Weed Examination. Cost: \$3.00 plus Nebraska noxious price. (Excessively weedy samples - \$15/hr.)

010.03F Seed Count (Cereals, Soybeans). Cost: \$4.00 per sample examined.

010.03G Sweetclover Species Purity Test. Cost: \$15 per sample.

010.03H Weed Examinations for other countries. Cost: \$15/hr.

011 The following kinds of agricultural seed may be labeled as to the percentage of Pure Live Seed (PLS) as prescribed in section 81-2,147.02(9):

Bluestem, Big	Sandreed, Prairie
Bluestem, Little	Switchgrass
Bluestem, Sand	Wheatgrass, Crested
Bluestem, Yellow	Wheatgrass, Beardless
Dropseed, Sand	Wheatgrass, var. Intermediate or var. Pubescent
Buffalograss	Wheatgrass, Slender
Grama, Blue	Wheatgrass, Streambank
Grama, Sideoats	Wheatgrass, Tall
Indiangrass Lovegrass, Sand	Wheatgrass, Thickspike

Needlegrass, Green

Wheatgrass, Western

Ricegrass, Indian

012 The following kinds of agricultural seeds are generally labeled as to variety and shall be labeled to show the variety name or the words "Variety Not Stated," or "VNS":

Alfalfa

Millet, Proso

Bahiagrass

Oat

Barley

Pea, field

Bean, field

Peanut

Beet, field

Rape

Brome, Smooth

Rice

Broomcorn

Rye

Clover, crimson

Safflower

Clover, red

Sorghum

Clover, white

Sorghum-Sudangrass

Corn, field

Hybrid

Corn, pop

Soybean

Cotton

Sudangrass

Cowpea

Sunflower

Crambe	Tobacco
Fescue, Tall	Trefoil, birdsfoot
Flax	Triticale
Lespedeza, striate	Wheat, common
Millet, foxtail	Wheat, durum
Millet, Pearl	

When two or more varieties are present in excess of five per cent (5%) and are named on the label, the names of each variety in excess of five percent (5%) shall be accompanied by the percentage of each.

013 The name of a kind or kind and variety of seed and any descriptive terms pertaining thereto shall be correctly represented in any advertisement of seed.

013.01 Name of Kind or Kind and Variety. The representation of the name of a kind or kind and variety of seed in any advertisement subject to the act shall be confined to the name of the kind or kind and variety determined in accordance with Section 81-2,147.01. The name shall not have associated therewith words or terms that create a misleading impression as to the history or characteristics of the kind or kind and variety. Descriptive terms and firm names may be used in kind or variety names; Provided, that the descriptive terms or firm names are a part of the name of the kind or variety of seed; for example, Stringless Green Pod, Detroit Dark Red, Black Seed Simpson and Henderson Bush Lima. Seed shall not be designated as hybrid seed in any advertisement subject to the act unless it comes within the definition of "Hybrid" in Section 81-2,147.01.

013.02 Characteristics of Kind or Variety. Terms descriptive as to color, shape, size, habit of growth, disease resistance, or other characteristics of the kind or variety, may be associated with the name of the kind or variety; provided, that it is done in a manner which clearly indicates the descriptive term is not part of the name of the kind or variety; for example, Oshkosh pepper (yellow), Copenhagen Market (round head) cabbage, and Kentucky Wonder pole bean.

013.03 Description of Quality and Origin. Terms descriptive of quality or origin and terms descriptive of the basis for representations made may be associated with the name of the kind or variety of seed; Provided, that the terms are clearly identified as being other than part of the name of the kind or variety; for example, Blue Tag Gem Barley, Idaho Origin Alfalfa, and Grower's Affidavit of Variety Atlas Sorghum.

013.04 Description of Manner of Production or Conditioning. Terms descriptive of the manner or method of production or conditioning the seed may be shown; for example, certified, registered, delinted, scarified, treated, and hulled, may be associated with the name of the kind or variety of seed, providing such terms are not misleading.

013.05 Separation of Brand Names from Kind and Variety Names. Brand names and terms taken from trademarks may be associated with name of the kind and variety or mixtures of kinds or blends of varieties of seed as an indication of source; Provided, that the terms are clearly indicated as being other than part of the name of the kind and variety, mixture or blend; for example, Valley Brand Blend 15 Alfalfa VNS, or River Brand Golden Cross Corn VNS. Seed shall not be advertised under a trademark or brand name in any manner that may create the impression that the trademark or brand name is a variety name.

014 The following kinds of agricultural seeds may not contain more than four percent (4%) by weight of weed seed of which not more than one-half of one percent ($\frac{1}{2}$ of 1%) may be restricted noxious weed seed as prescribed in section 81-2,147.03(1)(f). No mixture of any such seed may qualify for this exemption unless the total pure seed by weight of the seeds listed in this section is greater than 50% of the total pure seed by weight:

Bluestem, Big

Bluestem, Little

Bluestem, Sand

Bluestem, Yellow

Gramma, Blue

Gramma, Sideoats

Indiangrass

Sandreed, Prairie

015 The definitions of terms contained in the Nebraska Seed Law shall apply to such terms when used in these regulations.

016 Administration. These regulations shall be administered by the Department of Agriculture's Bureau of Plant Industry, located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is (402) 471-2394.

017 Publication Adopted. See Appendix A.

018 Annotation. Neb. Rev. Stat. §§81-2,147 to 81-2,147.11 (Reissue 1994 and Supp. 1995).

NEBRASKA ADMINISTRATIVE CODE

LAST DATE AMENDED: February 15, 1992

TITLE 25 - DEPARTMENT OF AGRICULTURE, BUREAU OF PLANT INDUSTRY

Chapter 10 - NOXIOUS WEED REGULATIONS

001 Designation and Publication of Noxious Weeds. The following weeds are hereby officially designated and published as noxious: Canada thistle - Cirsium arvense (L.) Scop.; leafy spurge - Euphorbia esula L.; musk thistle - Carduus nutans L.; plumeless thistle - Carduus acanthoides L.; knapweed (spotted and diffuse) - Centaurea (maculosa Lam. and diffusa Lam.). Noxious weed shall mean the plant, seed, or seedlings of such weeds.

002 Methods and Times to Control Noxious Weeds.

002.01 The noxious weed control period shall be when noxious weeds are actively growing.

002.02 The following methods of controlling noxious weeds are hereby approved and adopted by the director, so long as such methods are employed during the noxious weed control period, are performed at such frequency to prevent the spread of noxious weeds, and have the approval of or meet the control standards of the control authority.

002.02A Mechanical methods. Mechanical noxious weed control methods include mowing, chopping, digging, shredding, and tillage.

002.02B Crop management methods. Crop management weed control methods include crop rotation and crop competition.

002.02C Herbicide methods. The use of herbicides to control noxious weeds under the guidelines set out in the publication known as EC 93-130-D, "Herbicide Use In Nebraska," published by the University of Nebraska, Cooperative Extension Service, Institute of Agriculture and Natural Resources, a copy of which is attached and incorporated herein by reference and is hereby adopted and promulgated and may be used. Herbicide usage in a manner different from that set out in the aforementioned publication is approved under the following conditions:

002.02C1 The herbicide used shall be one that is approved or registered by the United States Environmental Protection Agency and the Nebraska Department of Agriculture for use on the noxious weeds to be controlled;

002.02C2 The method of applying the herbicide shall be in conformity with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended on the effective date of these regulations, and the federal regulations duly adopted thereunder, and shall be consistent with label directions; and

002.02C3 The rate of application of the herbicide shall not be in excess of that specified on the label and shall not be at a rate less than that supported by the efficacy data filed with the Environmental Protection Agency in conjunction with the registration of the herbicide.

002.02D Biological methods. To be deemed acceptable, the use of livestock, predators, pathogens, and parasites as a method of controlling noxious weeds shall be as effective as the use of herbicides, as set forth in 002.02C and shall be approved by the control authority.

002.03 Any determination made as to the failure of any person to control the spread of noxious weeds on land owned or controlled by him or her including the issuance of individual notices pursuant to Neb. Rev. Stat. §2-955, shall be guided by consideration of the intent and purposes of the Noxious Weed Control Act and these regulations. These factors include, but are not limited to, the following:

002.03A The potential for spread of the noxious weeds to other land;

002.03B The potential adverse effect of the noxious weeds and the seeds thereof on commodities to be removed from the land; and

002.03C The degree of infestation of the noxious weeds. While any noxious weed infestation whatsoever is unacceptable, excessive degrees of infestation necessitates the taking of immediate and definite action. Such action shall be initiated in cases where the quantity of noxious weeds present reasonably indicates that current control methods are not satisfactorily controlling the spread of noxious weeds and that more effective control methods are necessary. Consideration of this factor, as explained above, should not be construed to imply that less than excessive infestations need not be controlled.

003 Control Authority Duties and Responsibilities.

003.01 To substantively carry out its duties and responsibilities under the Act and these regulations, each control authority shall:

003.01A Annually submit the following reports to the director on or before January 31 of each year:

003.01A1 A weed program personnel information report. Such report shall be in the form prescribed in 25 NAC 10-008.01.

003.01A2 A budget report. The report form shall be that prescribed by the Nebraska State Auditor's office. A sample of such form is set forth in 25 NAC 10-008.02. A control authority need only to file that portion of the budget report which relates to the county weed control program. Such report shall, however, include as a minimum standard those sections of the county annual fiscal report containing information of the current budgeted revenue and expenditures as well as the previous year's revenues and expenditures.

003.01A3 Noxious weed control plan. Such report shall be in the form prescribed in 25 NAC 10-008.03 or as is amended by the director. Should the director amend the noxious weed control plan, such plan will supercede 25 NAC 10-008.03 and be distributed to the control authority by November 30 for use in the following year.

003.01A4 An infestation report. Such report shall be in the form prescribed in 25 NAC 10-008.04 and shall contain information relative to the amount and type of land infested with noxious weeds, and such other information as the director may prescribe.

003.01A5 An activity report. Such report shall be in the form prescribed in 25 NAC 10-008.05 and shall contain information relative to the overall county noxious weed control program.

003.01A6 Any other information deemed necessary by the control authority.

003.01B Annually inspect all lands within its jurisdiction in order to determine whether the Noxious Weed Control Act and its regulations have been complied with. The control authority shall document the annual inspection through the use of county road maps, plat books, or other records that have been approved by the Nebraska Department of Agriculture. All noxious weed infestations found during the annual inspection shall be additionally documented with an inspection report containing the information specified in 25 NAC 10-003.01C1. When the control authority determines that the noxious weeds have not been controlled, the control authority shall cause additional inspections to be made at least once during the noxious weed control period specified in 25 NAC 10-002 above until such time as the noxious weeds on said land have been controlled. Prior to the issuance of an individual notice, the control authority shall inspect such lands.

003.01C Execute an inspection report in conjunction with the performance of any inspection of land found to be infested with noxious weeds.

003.01C1 The inspection report shall contain the following:

003.01C1A The location of the land, including county, township, range, and section.

003.01C1B The date of the inspection.

003.01C1C The purpose of the inspection, whether it be annual, preliminary to the issuance of an individual notice, or otherwise.

003.01C1D If noxious weeds are present, the names thereof, or, if none are present, a statement to that effect.

003.01C1E The signature of the person conducting the inspection.

003.01C1F The name of the landowner and, if applicable, the tenant, if known or capable of being determined.

003.01C1G Number of acres inspected.

003.01C1H Number of acres infested.

003.01C1I Degree of infestation using the severity guidelines adopted in 25 NAC 10-008.06.

003.01C1J Current land use.

003.01C1K Any other information deemed appropriate by the control authority.

003.01C2 Whenever noxious weeds are found to be in growing crops, the control authority may, in addition to the inspection report, issue a crop inspection report as prescribed in 25 NAC 10-008.08. The crop inspection report may be used to prevent the movement or sale of growing crops when the harvest of such crops may result in hay, straw, seed, or grain becoming contaminated with viable noxious weed seeds or other noxious weed plant material capable of reproducing.

003.01C3 The control authority shall maintain files of inspection reports for a period of at least three (3) years following the date of inspection. Samples of acceptable inspection forms are contained in 25 NAC 10-008.06.

003.01D Publish a general notice on or before May 1 and between August 1 and September 1 of each year as provided in section 2-955 of the Noxious Weed Control Act. Such general notice shall follow, as a minimum standard, the form prescribed in 25 NAC 10-008.07. Published size of the general notice shall be at least four inches by six inches or be at least 24 square inches in size. Copies of such notices shall be made available to the director for inspection and review within fifteen (15) days following the date of publication.

003.01E Cooperate with other control authorities in carrying out its duties and responsibilities and in exercising its authority pursuant to the Noxious Weed Control Act and regulations adopted and promulgated under such act.

003.01F Prepare a report indicating the disposition of each individual notice issued by the control authority. Such reports shall be in the form prescribed in 25 NAC 10-008.10 or contain the same information as is specified in this prescribed form.

003.01G Employ a county weed superintendent who is certified by the Federal Environmental Protection Agency as a commercial applicator under the Federal Insecticide, Fungicide, Rodenticide Act in at least the following categories:

003.01G1 Agricultural pest control-plant, and

003.01G2 Right-of-way pest control.

003.01H Make available all books, papers, files, records, and reports pertaining to noxious weeds to the director for inspection and review.

003.01I Continually update all information filed with the Department as changes, additions, or deletions are made.

004 Dissemination of Noxious Weeds Through Articles.

004.01 All noxious weeds as designated in 25 NAC 10-001 are hereby found by the director to be noxious weeds which may be disseminated through articles. The following articles are hereby designated and published by the director as capable of disseminating noxious weeds:

004.01A Machinery and equipment;

004.01B Trucks;

004.01C Grain and seed;

004.01D Hay, straw, and other material of a similar nature;

004.01E Nursery stock;

004.01F Fence posts, fencing, or railroad ties;

004.01G Sod;

004.01H Manure;

004.01I Soil;

004.01J Any other articles determined by the director to have characteristics rendering it capable of disseminating noxious weeds.

004.02 The director hereby prescribes the following treatment for articles capable of disseminating noxious weeds, when such articles are suspected to have noxious weeds present:

004.02A Machinery and equipment used in the harvesting of crops shall be treated as follows:

004.02A1 Remove all loose material from the top and sides of the machine and all other places of lodgement by sweeping or the use of forced air or forced water;

004.02A2 Remove all noxious weeds from shakers, sieves, and other places of lodgement;

004.02A3 Run the machine empty for at least five (5) minutes, alternately increasing and decreasing the speed;

004.02A4 Follow the manufacturer's detailed instructions for cleaning the machine; and

004.02A5 Whenever possible, aforementioned treatments shall be performed while the article is still on the land on which it became infested. If treatment cannot be performed at this location, the location selected shall be such as to minimize the possible dissemination of noxious weeds.

004.02B Machinery and equipment other than that used for harvesting of crops including, but not limited to, trucks, tractors, mowers, planters, and other articles, such as railroad ties, fence posts and fencing, shall be treated by brushing, sweeping, forced air, forced water, physical removal of noxious weeds or any other method deemed by the control authority to be consistent with the intent and purpose of the Noxious Weed Control Act and this regulation. With respect to the location where treatment is to be performed, the same guidelines as set out in 004.02A5, above, shall apply.

004.02C Grain and seed suspected to contain noxious weeds may be transported prior to treatment if done in such a fashion as to prevent the dissemination of noxious weeds such as in enclosed trucks, but shall not be sold or transferred to another person prior to treatment. Grain and seed suspected to contain noxious weeds shall be treated by use of a seed cleaner which is effective in removing the noxious weeds from the grain and seed. Screenings remaining following treatment may not be used for feed, or for any other purpose which could result in the dissemination of noxious weeds.

004.02D Soil, sod, nursery stock, hay, straw, and other material of a similar nature are articles for which no known acceptable method of treatment exists. Such articles may not be moved from the location at which they initially become infested, but may be utilized at that location for their commonly recognized purpose.

004.02E Manure is an article for which no known acceptable method of treatment exists. Manure may not be moved from the location at which it initially became infested, but may be utilized at that location for its commonly recognized purposes.

004.02F Should a method of treatment be developed for such articles listed in 004.01 through 004.01J, the control authority may allow its utilization if it is found by the director to be consistent with the intent and purposes of the Noxious Weed Control Act and these regulations.

004.03 The control authority shall make inspection services available to those who request the inspection of articles capable of disseminating noxious weeds. When the control authority is unable to provide requested inspection services, or when information is all that is needed, the control authority shall make every effort to advise persons within the county as to the proper treatment of articles capable of disseminating noxious weeds. A sample article inspection form is set out in 25 NAC 10-008.09.

005 Procedure to Bring Weed Under or Remove from the County Control Program.

005.01 Petition to bring weed under county program. Petitions filed with the director under and by virtue of the provisions of sections 2-954 (1)(a) of the Noxious Weed Control Act shall be in the form prescribed in 25 NAC 10-008.11. Such petitions shall, in addition to the requirements of the provisions of the Noxious Weed Control Act, contain the following:

005.01A An affirmation by the control authority that adequate resources, including funds, personnel, and equipment are available to control the spread of the petitioned weed.

005.01B An affirmation by the control authority that the testimony and evidence presented at a public hearing on the petition generally supported the control authority's belief that special weed control problems exist within the county with respect to the petitioned weed.

005.01C An affirmation by the control authority that the spread of the weed petitioned for can be controlled through utilization of the resources of the control authority.

005.01D A statement of agreement or specified disagreement by the weed control superintendent of that county with respect to the affirmations of the control authority contained in the petition.

005.02 Removal of petitioned weed from county control program.

005.02A The control authority may petition the director to remove a previously petitioned weed from the county's control program by submitting a petition in the form prescribed in 25 NAC 10-008.12.

005.02B The director may remove a petitioned weed from the county control program by notifying the control authority of such in writing. Such removal may only occur upon a determination by the director that such weed is not being controlled by the county's weed control program, or no longer poses a serious or special problem in the county. Such notice shall provide the county an opportunity for a hearing before the director prior to the removal of the weed from the county control program.

006 Department Review of Continuing Education Programs.

006.01 The director shall review and approve all continuing education programs sponsored by any statewide association of county weed control superintendents or statewide associations of local governments responsible for weed control that the Noxious Weed Control Act requires county weed control superintendents to complete.

006.01A A description of any continuing education program shall be submitted by the sponsoring association to the director at least three weeks prior to the first scheduled day of the continuing education program.

006.01B Any continuing education program shall include the following:

006.01B1 A full attendance requirement with at least two roll calls for each eight hours of education.

006.01B2 Examinations which adequately test the participants' comprehension and understanding of the educational material presented in the program.

006.01B3 Passing scores of at least 70 percent on the examinations; and

006.01B4 Adequate procedures for documenting the attendance records, examinations, and examination scores.

006.01C Within three weeks after the last scheduled day of a continuing education program, the sponsoring association shall provide the director documentation to show the continuing education program was carried out according to the description the association submitted to the director. Such documentation shall include:

006.01C1 Attendance records of all weed superintendents.

006.01C2 Copies of the examinations actually given during the program.

006.01C3 A listing of weed superintendents who have received passing scores for the program; and

006.01C4 Evidence that superintendents who did not fully attend the program and who did not receive a passing score for the program were not credited by the association as having completed the program.

007 Administration. These regulations shall be administered by the Department of Agriculture's Bureau of Plant Industry, located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is (402) 471-2394.

008 Forms.

008.01 Personnel Report

WEED CONTROL AUTHORITY BOARD ROSTER

(Due January 31 of each year)

_____ County, 19__

Section 2-953 of the Noxious Weed Control Act defines the control authority as the county weed district board or the county board.

Control authority is: _____ County Board _____ Weed Board

Current Years

Board Term of

Title/Name Mailing Address Telephone Type* Ends Service

|Chairperson/Pres: ||()| | | | | | | | | |

| | | | | | | | |V. Chair/V. Pres: ||()| | | |

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|Secretary: ||()| | | |

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|Treasurer: ||()| | | |

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|Member: ||()| | | |

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Member: || () |||

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Superintendent: || () \\\\/\\\\\\|

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* Type: C = City representative, weed board

R = Rural representative, weed board

B = Board member, county commissioner/supervisor

NOTE: (1) Roster should reflect current or upcoming members only.

(2) Ex-officio or weed liaison, commissioners, or supervisors designated to receive correspondence in lieu of the chairperson should be indicated.

County Weed Superintendent Signature Date

Control Authority Chairperson/President Signature Date

008.02 State Budget Form

008.03 Control Plan

Nebraska Department of Agriculture

Bureau of Plant Industry

P.O. Box 94756

Lincoln, Nebraska 68509

(402) 471-2394

NOXIOUS WEED CONTROL PLAN QUESTIONNAIRE

(Due January 31 of each year)

_____ County, 19 _____

Section 2-954 of the Noxious Weed Control Act requires each control authority to establish a coordinated program for the control of noxious weeds within the county.

On a separate sheet of paper, outline your anticipated noxious weed control plans, including the items listed below for the coming year. Be as specific and detailed as possible. Your completed control plan should then be attached to the control plan questionnaire, along with the completed signature page.

GENERAL

Control authority noxious weed objectives:

1. Provide at least three specific objectives that the county control authority intends to achieve in the coming year.
2. For each objective previously identified, provide the following information:
 - a. Purpose of the objective relative to the Noxious Weed Control Act.
 - b. Resources required to achieve the objective.
 - c. Specific procedures and steps needed to accomplish the objectives.
 - d. Final objective completion dates.

NOXIOUS WEED ENFORCEMENT

1. Which legal notices will be the primary enforcement tool of the county control authority?

~ 10-day ~ 15-day ~ Both

The guidelines that the control authority has established for the weed superintendent to follow prior to the issuance of a legal notice are as follows:

2. Following the issuance of an individual notice, the policy of the control authority is as follows: (Include information on inspections, reports completed, persons notified, and required deadlines.)

3. Following the receipt of a legitimate report of a severe uncontrolled noxious weed infestation on private land, what steps will the control authority take to achieve compliance with the Noxious Weed Control Act? Your answer should be based on the assumption that personal requests have already been made to the landowner to control the infestation. However, those requests have been declined. Your plan should include information regarding inspection reports and type of notification or instructional materials that will be used. Identify persons conducting the enforcement work and persons who will be notified in the situation, such as any county board members, county clerks, sheriff, attorney, etc.

PUBLIC RELATIONS

Voluntary noxious weed control is an essential component of implementing the Noxious Weed Control Act. Public awareness and landowner cooperation is vital to a successful weed control program.

1. What public awareness meetings are planned? (Include approximate dates, type of group targeted, and anticipated topics.)

2. What plans have been made to have a display or to speak at another group's function? (i.e., co-op open house, extension crop meetings, city or countywide "home shows," county fair, or chemical company sponsored meeting.)

3. What type of plans do you have for notifying landowners concerning fall and spring noxious weed control periods? (i.e., mailings, posters, etc.)

4. The newspaper, radio, and television are great media to contact a large number of people. How will you include them in your noxious weed program?

INSPECTIONS

The Noxious Weed Control Act requires that all land within the jurisdiction of the control authority be inspected annually and that these inspections shall be documented as specified in the noxious weed rules and regulations 003.01B.

1. For the coming year, identify the person(s) who will be principally responsible for inspections.

2. During which months of the coming year will most noxious weed inspections be conducted? How much time will be devoted to this requirement of the Noxious Weed Control Act?

3. How many inspection reports were completed in this calendar year? How many are anticipated for the next calendar year?

4. How will the inspection of non-infested land be documented in the coming year?

5. Of the total number of inspection reports anticipated for the coming year, approximately what percent do you estimate will be the following type of inspections?

Annual _____% Complaint _____% Follow-up _____%

MISCELLANEOUS DATA

1. Noxious weed mill levy _____

2. Total county levy _____

3. County valuation _____

4. County acres _____

5. The weed superintendent is: ~ Full-time ~ Part-time

If the weed superintendent is part-time, please explain.

Submitted and approved by the County Noxious Weed Control Authority.

County Weed Superintendent Signature Date

Control Authority Chairman Signature Date

008.04 Infestation Report

NOXIOUS WEED INFESTATION REPORT

(Due January 31 of each year)

County, 19

Section 2-954(3)(b) Noxious Weed Control Act requires the control authority to examine all land under its jurisdiction and for the superintendent to compile data on infested acres.

Record Acres Infested and Severity for Each Noxious Weed

and Land Use for the Preceeding Year

Musk Plumeless Canada Leafy

Thistle Thistle Thistle Spurge Knapweed*

Railroad

None

Trace

Light

Moderate

Severe

Total Acres

Roads

None

Trace

Light

Moderate

Severe

Total Acres

Nonagricultural

None

Trace

Light

Moderate

Severe

Total Acres

Pasture/Range/Idle

None

Trace

Light

Moderate

Severe

Total Acres

Cropland

None

Trace

Light

Moderate

Severe

Total Acres

County Total

None

Trace

Light

Moderate

Severe

Total Acres

* spotted and diffuse

Noxious weeds petitioned by county:

Total Acres:

County Weed Superintendent Signature Date

Control Authority Chairperson/President Signature Date

008.05 Activity Report

ACTIVITY REPORT

(Due January 31 of each year)

_____ County, 19 ____

Month and year weed superintendent started in the position:

For the preceding year, indicate the following:

1. Control authority employees

____ a. Number of weeks weed superintendent was employed full-time as a weed superintendent.

- _____ b. Number of part-time or seasonal personnel employed annually.
- _____ c. Number of full-time personnel.
- _____ d. Percent of time weed superintendent spent on required noxious weed control activities.

2. County noxious weed budget

- _____ a. Actual total weed budget spent for the previous fiscal year.
- _____ b. Total weed budget most recently adopted and approved (total requirements).
- _____ c. Tax dollars required for weed control for last fiscal year (budgeted for current fiscal year).

3. Public relations and education

- _____ a. Number of public education and informational meetings presented by the control authority.
- _____ b. Number of noxious weed articles published based on information provided by the control authority.
- _____ c. Number of radio interviews conducted by the control authority regarding noxious weeds.
- _____ d. Number of informational letters or brochures distributed by the control authority regarding noxious weeds.
- _____ e. Number of events that informational noxious weed displays were presented by the control authority.

4. Number of inspections completed and documented with appropriate inspection reports

Spring Fall

- _____ _____ a. Annual Noxious Weed Inspection.
- _____ _____ b. Special Noxious Weed Inspection.
- _____ _____ c. Complaint Noxious Weed Inspection.
- _____ _____ d. Follow-up Noxious Weed Inspection.
- _____ _____ e. Crop inspections.

_____ f. Article inspections.

5. Noxious weed notification and enforcement

_____ a. Number of reports received concerning uncontrolled noxious weed infestations (includes landowner complaints and Nebraska Department of Agriculture (NDA) reports).

_____ b. Number of requests made to individuals or other entities to control noxious weeds (excluding official notices).

6. Official 15-day notice results

_____ a. Number of 15-day notices issued.

_____ b. Number of 15-day notices which achieved acceptable compliance prior to notice expiration.

_____ c. Number of notices prosecuted.

_____ d. Dollar value of fine notices collected.

_____ e. Number of 15-day notice disposition reports completed.

7. Official 10-day notice results

_____ a. Number of 10-day notices issued.

_____ b. Number of 10-day notices which achieved acceptable compliance prior to expiration.

_____ c. Number of parcels force controlled by the county.

_____ d. Number of parcels force controlled by contractors.

_____ e. Total number of acres force controlled.

_____ f. Total number of liens filed for nonpayment.

_____ g. Total number of 10-day notice disposition reports completed.

8. Weed Superintendent Education and Training

_____ a. Number of regional Nebraska Weed Control Association (NWCA) meetings attended.

____ b. Number of state NWCA meetings, workshops, or seminars attended.

____ c. Number of university, state, or federal information or training sessions attended.

____ d. Number of private industry training sessions attended.

____ e. Other _____

9. Number of meetings weed superintendent held or attended with (other than those listed above):

____ a. Control authority.

____ b. County attorney.

____ c. District NDA inspector.

____ d. Railroad officials.

____ e. Road departments.

____ f. Municipalities.

____ g. Federal officials.

____ h. Other or miscellaneous _____

County Weed Superintendent Signature Date

Control Authority Chairperson/ President Signature Date

008.06A Inspection Report

NOXIOUS WEED INSPECTION REPORT

No. _____

Legal Description (Sec. Twp. Rge.)

Landowner Address

Tenant Address

For each inspection, include the following information:

Date: Time:

Inspection Type: Severity:

Noxious Weeds Found:

Locations:

Acres Inspected: Acres Infested: Land Use Category:

Control Recommendations:

Type of Notification Served:

Follow-up Response:

Other Comments:

Inspector Signature

Inspection Types: | | |

AN = Annual | | |

SP = Special | | |

IN = Individual Notice | | |

FO = Follow-up | | |

|||

Noxious Weed Severity Guidelines: |||

N = None |||

T = Trace (a few present) |||

L = Light (scattered individuals |||

or patches) |||

M = Moderate (uniform concentration |||

or scattered severe patches)

S = Severe (large dense concentrations) Map size:

NOXIOUS WEED INSPECTION

SURVEY METHODS

Noxious weed mapping and inspecting is perhaps one of the most important duties of the county weed superintendent. Regular survey work will identify new and localized weed infestations, monitor yearly changes in existing infestations, and provide background documentation for enforcement efforts.

It is not the intent of this mapping inspection system to require detailed weed counts, but rather to provide a standardized approach using both qualitative and quantitative infestation characteristics. With experience, infestations can be visually estimated.

Survey Method

1. Define the total area of interest in acres, i.e., section = 640 acres.
2. On the map, delineate major land use areas. Indicate points of reference, compass direction (north), etc.
3. For each land use area, indicate noxious weed infestations, estimate acreage, and categorize the severity based on the guidelines provided.
4. The inspection report should serve as both a mapping tool and a documentation of your efforts. Thus, including all information requested at the top of the inspection report is important. Be as detailed and accurate as possible.

Approximating Area

1 acre = 208 ft. x 208 ft. = 100 ft. x 435 ft.

1 acre = approximately 1 football field 100 yds. x 50 yds.

1 acre = 1/2 mile of roadside 16.5 ft. wide

1 section = 640 acres = 1 mile x 1 mile

NOXIOUS WEED SURVEY AND INSPECTION REPORT ADDENDUM

Ratings

Annual/Biennial Perennial

Count Count

None None found 0 0

Trace Present, but very few Less than 1/ Less than 1

found. Enough to reproduce, acre average shoot/acre OR

but not enough to cause less than 1

immediate economic loss. "small" patch/

100 acres

Light Scattered OR patches 1-500/acre 1-500 shoots/

of moderate infestations acre, OR 1-2

affecting less than 1/3 "small"

of the area. patches/

100 acres

Moderate Mostly uniform concen- 500-5,000/acre 500-5,000

tration OR scattered OR shoots/acre

severe patches 1-10/100 sq. ft. OR 3-4

affecting 1/3 to 2/3 of patches/

the area. 100 acres

Severe Dense uniform con- Greater than Greater than

centration or numerous 5,000/acre OR 5,000 shoots/

large severe patches Greater than acre OR greater affecting more than 10/100 sq. ft. than 5 patches/

2/3 of the area 100 acres

Note: A "small" patch is defined as an area less than 100 sq. ft.

Codes

LAND USE CODES GROWTH STAGE CODE

CL - Cropland SD - Seed

NA - Nonagricultural SR - Seedling or Rosette

PT - Pasture/Range/Idle SE - Sten Elongation/Bolting

RR - Railroad BD - Bud Stage

RS - Roads FL - Flower

MA - Mature

Guidelines for Approximating Area

1 section = 640 acres = 1 miles x 1 mile

1 acre = 208 x 208 feet = 100 feet x 435 feet = 43,560 square feet

1 acre = about a football field 100 yards x 50 yards

1 acre = ½ mile of roadside 16.5 feet wide

1,000 square feet = 31.6 feet x 31.6 feet - 10 feet x 100 feet

008.06B Inspection Report No. _____

NOXIOUS WEED INSPECTION REPORT

County: Date:

Legal Description: (Sec. Twp. Rge.)

Site Acres:

Annual: Special: Random: Follow-up

Landowner Name: Tenant Name:

Habitat | Habitat

| Growth

Trace Light Mod. Severe | Trace Light Mod. Severe | Stage

Musk Thistle | | Plumeless Th. | |

Canada Th. | |

Leafy Spurge | | Knapweed | |

Habitat | Habitat

| Growth

Trace Light Mod. Severe | Trace Light Mod. Severe | Stage

Musk Thistle | | Plumeless Th. | |

Canada Th. | |

Leafy Spurge | | Knapweed | |

Follow-up action by:

| | |

| | |

is requested. A follow-up inspection | | |

will be made by the county weed control | | |

authority. | | |

| | |

Report Copies to: | | |

Landowner | | |

Control Authority | | |

County Attorney | | |

| | |

| | |

Photographs:

Roll No.

Print No.

Comments:

Inspector Signature:

NOXIOUS WEED INSPECTION

SURVEY METHODS

Noxious weed mapping and inspecting is perhaps one of the most important duties of the county weed superintendent. Regular survey work will identify new and localized weed infestations, monitor yearly changes in existing infestations, and provide background documentation for enforcement efforts.

It is not the intent of this mapping inspection system to require detailed weed counts, but rather to provide a standardized approach using both qualitative and quantitative infestation characteristics. With experience, infestations can be visually estimated.

Survey Method

1. Define the total area of interest in acres, i.e., section = 640 acres.
2. On the map, delineate major land use areas. Indicate points of reference, compass direction (north), etc.
3. For each land use area, indicate noxious weed infestations, estimate acreage, and categorize the severity based on the guidelines provided.
4. The inspection report should serve as both a mapping tool and a documentation of your efforts. Thus, including all information requested at the top of the inspection report is important. Be as detailed and accurate as possible.

Approximating Area

1 acre = 208 ft. x 208 ft. = 100 ft. x 435 ft.

1 acre = approximately 1 football field 100 yds. x 50 yds.

1 acre = ½ mile of roadside 16.5 ft. wide

1 section = 640 acres = 1 mile x 1 mile

NOXIOUS WEED SURVEY AND INSPECTION REPORT ADDENDUM

Ratings

Annual/Biennial Perennial

Count Count

None None found 0 0

Trace Present, but very few Less than 1/ Less than 1

found. Enough to reproduce, acre average shoot/acre OR

but not enough to cause less than 1

immediate economic loss. "small" patch/

100 acres

Light Scattered OR patches 1-500/acre 1-500 shoots/

of moderate infestations acre, OR 1-2

affecting less than 1/3 "small"

of the area. patches/

100 acres

Moderate Mostly uniform concen- 500-5,000/acre 500-5,000

tration OR scattered OR shoots/acre

severe patches 1-10/100 sq. ft. OR 3-4 patches/

affecting 1/3 to 2/3 of 100 acres

the area.

Severe Dense uniform con- Greater than Greater than

centration or numerous 5,000/acre OR 5,000 shoots/

large severe patches Greater than acre OR greater

affecting more than 10/100 sq. ft. than 5 patches/

2/3 of the area. 100 acres

Note: A "small" patch is defined as an area less than 100 sq. ft.

Codes

LAND USE CODES GROWTH STAGE CODE

CL - Cropland SD - Seed

NA - Nonagricultural SR - Seedling or Rosette

PT - Pasture/Range/Idle SE - Sten Elongation/Bolting

RR - Railroad BD - Bud Stage

RS - Roads FL - Flower

MA - Mature

Guidelines for Approximating Area

1 section = 640 acres = 1 miles x 1 mile

1 acre = 208 x 208 feet = 100 feet x 435 feet = 43,560 square feet

1 acre = about a footbal field 100 yards x 50 yards

1 acre = ½ mile of roadside 16.5 feet wide

1,000 square feet = 31.6 feet x 31.6 feet - 10 feet x 100 feet

008.07 General Notice. Publish on or before May 1 and between August 1 and September 1.

NOXIOUS WEEDS MUST BE CONTROLLED

You are required to control noxious weeds on your property.

The noxious weeds are: Musk Thistle, Plumeless Thistle, Canada Thistle, Leafy Spurge, knapweed (spotted and diffuse), and _____. Notice is hereby given this _____ day of _____, 19 _____, pursuant to the Noxious Weed Control Act, section 2-955, subsection 1(a), to every person who owns or controls land in _____ County, Nebraska, that noxious weeds being or growing on such land shall be controlled at such frequency as to prevent establishment, provide eradication, or reduce further propagation or dissemination of such weeds.

Upon failure to observe this notice, the county weed superintendent is required to:

1. Proceed pursuant to the law and issue legal notice to the landowner of property infested with noxious weeds giving such landowner 15 days to control the noxious weed infestation. Conviction for noncompliance may result in a \$100.00 per day fine to the landowner with a maximum fine of \$1,500; or
2. Should more immediate control be required, proceed pursuant to the law and have the weeds controlled by such method as he/she finds necessary, the expense of which shall constitute a lien and be entered as a tax against the land, and be collected as other real estate taxes are collected, or by other means as provided by law.

The public is also hereby notified that noxious weed seed and propagative parts may be disseminated through the movement of machinery and equipment, trucks, grain and seed, hay, straw, nursery stock, fencing materials, sod, manure, and soil as well as articles of similar nature. Methods of treatment have been prescribed by the Director of Agriculture and may be obtained from the county weed control authority.

By Order of _____ County Control Authority.

008.08 Crop Inspection Report

No.

CROP INSPECTION REPORT

(Attach Noxious Weed Inspection Report)

County, Nebraska

The crop, , inspected on ,

growing on

(Legal Description)

Section Township Range ,

owned by and controlled by ,

(a) has been inspected and found free of noxious weeds

(b) has been inspected and found to be infested with noxious weeds and is hereby quarantined and shall not be moved from said premises without written permission of .

(County Weed Control Authority)

The prescribed treatment is:

□

Weed Control Superintendent Signature Telephone Date

□

Producer Signature Telephone Date

Release of Quarantined Crop

The crop growing on the following described land has been effectively treated to prevent the dissemination of noxious weeds and is no longer subject to quarantine.

Legal Description

Section Township Range

Crop

□

Signature and Title of Releasing Agent Telephone Date

008.09 Article Inspection Form

NOXIOUS WEED ARTICLE INSPECTION REPORT

County, Nebraska

This is to certify that a noxious weed inspection has been made of the following farm land or article(s) capable of disseminating noxious weeds.

Legal Noxious Noxious Weed(s)

Article Legal Description Owner Weed Free Seed(s) Found

| | | | | | |

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Action Taken

| | Articles found to be free of noxious weeds

| | The following articles were found to be contaminated with noxious weeds:

Therefore, the following articles:

are hereby quarantined and shall not be moved from said premises without

written permission of:

County Weed Control Authority

The prescribed treatment for the contaminated article(s) is:

()

Weed Control Superintendent Signature Telephone Date

Release of Quarantined Article(s)

The following article(s) have been properly and effectively treated to prevent the dissemination of noxious weeds and are no longer subject to quarantine:

()

Signature and Title of Releasing Agent Telephone Date

008.10 Individual Notice Disposition Report

INDIVIDUAL NOTICE DISPOSTION REPORT

County of , State of Nebraska, in reference

to individual notice issued on , 19 .

Notice type: 15-day 10-day

Method of Delivery

RECORD OF INSPECTIONS PERFORMED/EVIDENCE COLLECTED

Date Report No. Comments

Prior to or at expiration of 10- or 15-day period, infestation was:

Adequately controlled by: (method)

Partially controlled by: (method)

Not Acceptable Acceptable for short term

No evidence of control attempted as of

Following expiration of 10- or 15-day period:

10-Day Notice 15-Day Notice

Force controlled Controlled on day #

on of fine period

by County attorney notified and

method evidence submitted on

Landowner notified of charges Court hearing date

on Court ruling

Register of deeds notified

on

Payment received on

Unpaid for two months expense

certified to county treasurer on

008.11 Petition to Designate a Weed Noxious in a County

Section 2-954 of the Noxious Weed Control Act states that whenever special weed control problems exist in a county involving weeds not included in the rules and regulations, the control authority may petition the Director to bring such weeds under the county control program.

PETITION

Date:

To: The Director of Agriculture, State of Nebraska

From: The County Control Authority

RE: Petition to have the Director of Agriculture approve of the employment of the forced control provisions of sections 2-953 to 2-955 and 2-958 of the Noxious Weed Control Act against the weed known as:

Common name:

Scientific name:

The County Control Authority hereby petitions the Director of Agriculture of the state of Nebraska for approval of our employment of the forced control provisions of sections 2-953 to 2-955 and 2-958 of the Noxious Weed Control Act against the weed:

(scientific name)

In support of said petition, we hereby make the following affirmations to the Director of Agriculture:

1. That said weed poses a serious and special problem in this county due to the adverse effect of said weed on crop or livestock production, aesthetic value and/or other adverse impacts which reduce land value and decrease tax revenue.
2. That said weed has not been designated and published by the Director of Agriculture as noxious.
3. That the county board of County has approved of the making of this petition.
4. That the control authority, in cooperation with the county board, held a hearing on the petition on at in , Nebraska.
5. That notice of said hearing was given by publication in a newspaper of general circulation in the county at least ten days prior to the hearing, and that a copy of said notice is attached hereto.
6. That a transcript of said hearing has been prepared and a copy thereof is attached hereto.
7. That the testimony and evidence presented at the public hearing generally supports affirmation number 1.
8. That County is willing and able to devote adequate resources as defined in 25 NAC 10-005.01A for the control and prevention of said weed.
9. That said weed can be controlled through utilization of the resources referred to affirmation number 8.

County Control Authority Signatures

I, , duly certified weed control superintendent for County, Nebraska, have reviewed the above-mentioned affirmations of the weed control authority and find them to be accurate to the best of my knowledge, with the following exceptions: (If none, so state)

Signed:

APPROVAL

County Board Signatures

008.12 Petition to Remove Weed from County Control Program

PETITION

Date:

To: The Director of Agriculture, State of Nebraska

From: The County Weed Control Authority

RE: Petition to have the Director of Agriculture approve removal of the employment of the forced control provisions of sections 2-953 to 2-955 and 2-958 of the Noxious Weed Control Act against the weed known as:

Common name:

Scientific name:

The County Weed Control Authority hereby petitions the Director of Agriculture of the state of Nebraska for approval to remove forced control provisions of sections 2-953 to 2-955 and 2-958 of the Noxious Weed Control Act against the weed:

(scientific name)

In support of said petition, we hereby make the following affirmations to the Director of Agriculture:

1. That said weed no longer poses a serious or special problem in this county.
2. That said weed has not been designated and published by the Director of Agriculture as noxious.
3. That the county board of County has approved of the making of this petition.
4. That the control authority, in cooperation with the county board, held a hearing on the petition on at in , Nebraska.

5. That notice of said hearing was given by publication in a newspaper of general circulation in the county at least ten days prior to the hearing, and that a copy of said notice is attached hereto.

6. That a transcript of said hearing has been prepared and a copy thereof is attached hereto.

7. That the testimony and evidence presented at the public hearing generally supports affirmation 1. above.

County Weed Control Authority Signatures

I, , duly certified weed control superintendent for County, Nebraska, have reviewed the above-mentioned affirmations of the weed control authority and find them to be accurate to the best of my knowledge, with the following exceptions: (If none, so state)

Signed:

APPROVAL

County Board Signatures

009 Publication Adopted. See Appendix A.

010 Annotation. Neb. Rev. Stat. §§2-945.01 through 2-966. (Reissue 1991).

TITLE 25 - DEPARTMENT OF AGRICULTURE, BUREAU OF PLANT INDUSTRY

Chapter 12 - AGRICULTURAL LIMING MATERIALS REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in administering the Agricultural Liming Materials Act, Neb. Rev. Stat. §2-4301 to 2-4327 (Reissue 1983).

002 Administration. These regulations are administered by the Department of Agriculture's Bureau of Plant Industry, Fourth Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is (402) 471-2394.

003 Definitions.

003.01. The term "Act" shall mean the Agricultural Liming Materials Act, Neb. Rev. Stat. §2-4301 to 2-4327 (Reissue 1983).

003.02. The terms defined in the Act shall have the same meaning in these regulations.

003.03. The "Bureau" shall mean the Department of Agriculture's Bureau of Plant Industry.

003.04. "AOAC" shall mean the Association of Official Analytical Chemists.

004 Agriculture Liming Materials Fineness Standard. All agriculture liming materials distributed in this State shall use the following standard to determine the fineness of the liming material;

004.01. Multiply the percent of total material passing a number 4 sieve by .1 (one tenth).

004.02. Multiply the percent of total material passing a number 8 sieve by .3 (three tenths).

004.03. Multiply the percent of total material passing a number 60 sieve by .6 (six tenths).

004.04. The addition of the results obtained in 004.01, 004.02, and 004.03 will provide the fineness factor of the agriculture liming material.

005 Effective Calcium Carbonate Standard. To determine the effective calcium carbonate (ECC) per ton, the following standard will be used:

005.01. Multiply the fineness factor of the agriculture liming material obtained in 004.04 by the percent of calcium carbonate equivalent in the liming material.

005.02. Multiply the factor obtained in 005.01 by 2000 to determine the pounds of effective calcium carbonate (ECC) per ton.

006 Sampling Procedure. The method of sampling agricultural liming materials shall be as described in the publication AOAC 13th Edition, 1. Agricultural Liming Materials, page 1, section 1.001, Sampling (1) - Procedure, subparagraphs b, c and d. A copy of the publication AOAC 13th Edition, page 1, is attached hereto as Exhibit A, and incorporated herein.

007 Analysis Procedure. The method of analysis shall be as described in the publication AOAC 13th Edition, 1. Agricultural Liming Materials, page 1, sections 1.002 Mechanical Analysis (2) Procedure, 1.004 Neutralizing Value, 1.005 Indicator Titration Method, and 1.006 Potentiometric Titration Method (3), a copy of the publication AOAC 13th Edition, page 1, is attached hereto as Exhibit A and incorporated herein.

008 Official Analysis Results. Analytical results of all official samples shall be on file at the Department of Agriculture and may reviewed during the Bureau's normal working hours, Monday through Friday.

009 Obtaining Portions of Official Samples. Samples which are found to be deficient will be retained by the State Laboratory for 90 days from the date of testing. A portion of those samples may be obtained by contacting the Nebraska Department of Agriculture.

010 Inspection Fees. There shall be paid to the Director of Agriculture for all agricultural liming materials distributed in Nebraska, an inspection fee at the rate of ten cents (10¢) per ton. The fee shall be paid by the retailer licensee and in the case of Agricultural Lime Slurry, the fee shall be paid on the base lime material only.

011 Annotation. Neb. Rev. Stat. §2-4301 to 2-4327 (Reissue 1983).

NEBRASKA ADMINISTRATIVE CODE

LAST DATE AMENDED: August 7, 1990

TITLE 25 - DEPARTMENT OF AGRICULTURE, BUREAU OF PLANT INDUSTRY

Chapter 13 - PLANT PROTECTION AND PLANT PEST ACT REGULATIONS

001 Definitions.

001.01 The definitions of terms contained in the Plant Protection and Plant Pest Act shall apply to such terms when used in these regulations.

001.02 "Act" shall mean the Plant Protection and Plant Pest Act, Neb. Rev. Stat. §§2-1072 to 2-10,117.

001.03 Balled and burlapped shall mean nursery stock which has been removed from the growing site with a ball of soil, containing a portion of the undisturbed root system, left intact and encased in burlap or other similar material to hold the soil in place. This shall also include nursery stock which has been removed from the growing site by a mechanical digger, containing the root system, left intact but not necessarily encased in burlap or other similar material.

001.04 Balled and potted shall mean nursery stock which has been removed from the growing site with a ball of soil, containing the root system, left intact and placed in a container other than listed in 25 NAC 13-001.03.

001.05 Bare root shall mean nursery stock which has been removed from the growing site with the root system substantially free of soil.

001.06 Bench balled shall mean nursery stock which has been removed from the growing site with the root system substantially free of soil, then packaged in soil or growing medium to form a ball, and wrapped in burlap or similar material to hold the contents in place.

001.07 Container grown shall mean nursery stock which has been planted in a container with the root system in soil or other growing medium capable of sustaining normal plant growth. The nursery stock has become established in the container and exhibits a well-rooted condition as evidenced by the medium ball remaining intact when removed from said container.

001.08 Etiolated growth shall mean plant growth which is bleached or whitened and elongated usually as the result of the exclusion of light.

001.09 Greenhouse plants shall mean plants grown in an enclosed environment and the growing medium has been processed to exclude indigenous plant pests.

001.10 Noxious weeds shall mean those plants as defined in the Nebraska Noxious Weed Control Act, Neb. Rev. Stat. §2-953, and the rules and regulations adopted and promulgated under it.

001.11 Packaged shall mean bare root nursery stock packed with the roots in moisture retaining material which is wrapped and sealed in plastic or other material to hold the contents in place.

001.12 Phytosanitary or export certificate shall mean federal Phytosanitary Certificate, State Phytosanitary Certificate, Export Certificate, Processed Plant Products Certificate, Phytosanitary Certificate for Reexport, or any other similar documents as they may apply.

001.13 Potted shall mean nursery stock which has been planted in a container with the roots in soil or other growing medium which has not become established as described in 25 NAC 13-001.07.

001.14 Recognized authorizing agency shall mean an agency whose laws, regulations, and inspection, certification and licensing program and standards are essentially equivalent to, and meet the requirements of the Plant Protection and Plant Pest Act, the regulations adopted and promulgated under it, and the Nebraska Department of Agriculture's inspection program.

001.15 Soil shall mean that material occupying or originating from the outermost part of the earth's crust.

001.16 Viability shall mean capable of germination or living and developing under normal growing conditions into a plant which would be typical in height, spread, caliper, dimension, condition, quality and age of plant of that species.

001.17 Weed shall mean any plant species other than the plant species as labeled.

002 American Standard for Nursery Stock Adopted.

002.01 The *American Standard for Nursery Stock*, copyright 1990, published by the American Association of Nurserymen, Inc., shall be used by the Department in determining standards and grades of nursery stock when not in conflict with the Act. A copy of the publication is attached and incorporated herein by reference and is hereby adopted and promulgated and may be used. The publication is available upon

request to the Department.

003 Fees for Licensing, Inspection, and Reinspection of Growers and Collectors.

003.01 The fees charged for licensing, inspection of growers and collectors, and reinspection are authorized by Neb. Rev. Stat. §§2-1080, 2-1092, 2-1093, 2-1094, 2-1095, 2-10,102, and 2-10,116.01 of the Act.

003.01A Persons required to obtain a grower's license shall make application to the Department prior to March 15, or any person making initial application prior to the beginning of distribution and shall be charged an inspection fee based on acreage. Persons who file an application on or after April 15, initial applications not received prior to beginning distribution or growers whom require a reinspection shall pay, in addition to the acreage, a late fee assessed by using the mileage rate and inspection time rate, as set below in 25 NAC 13-003.01B.

003.01B The following rates shall be used in determining inspection and reinspection costs of growers and collectors:

003.01B1 Mileage charge - \$0.24 per mile.

003.01B2 Inspection time - \$15.00 per hour.

003.01B3 Inspection time shall include the driving time to and from the location in addition to the time spent conducting the inspection.

003.01B4 Acreage charge - \$25.00 per acre for the first acre or fraction thereof and \$5.00 per acre thereafter.

003.01B5 If grower or collector inspection fees are more than one month late, an additional penalty fee of 20% of the total fees due will be added on for each month the fees are late.

004 Fees for Licensing and Reinspection of Dealers and Brokers.

004.01 The licensing fee, late fee, and reinspection fee for dealers and brokers is authorized by Neb. Rev. Stat. §§2-1077, 2-1097, 2-1098, 2-1099, 2-10,100, 2-10,100.01, and 2-10,116.01 of the Act.

004.01A Dealers who desire to distribute nursery stock in Nebraska shall obtain a dealers license. Persons shall submit a completed application provided by the Department, accompanied by the appropriate fee prior to December 31 of the following calendar year, or any person making initial application prior to beginning distribution.

004.01B An annual license fee of \$100.00 shall be assessed for dealers. An annual license fee of \$100.00 shall be assessed for brokers.

004.01C The delinquent fee shall be \$20.00 per month for each month delinquent, not to exceed \$100.00.

004.01D If a reinspection of a dealer is necessary, they shall be assessed a fee based on mileage and inspection time.

004.01D1 Mileage charge - \$0.24 per mile.

004.01D2 Inspection time - \$15.00 per hour.

004.01D3 Inspection time shall include the driving time to and from the location in addition to the time spent conducting the inspection.

005 The Inspection of Dealers, Growers, Collectors, and Optional Inspections.

005.01 The inspection of dealers, growers, collectors and optional inspection of nursery stock and the associated reports issued are authorized by Neb. Rev. Stat. §§2-1091, 2-1092, 2-1093, 2-1094, 2-1095, 2-1096, 2-1097, 2-1098, 2-10,100, 2-10,101, 2-10,102, 2-10,103, 2-10,105, and 2-10,115 of the Act.

005.01A Nursery stock shall be accessible during regular business hours to the Department for inspection. Weeds or other growth which hinders a proper inspection shall be grounds to suspend or withhold any license or be cause for a reinspection.

005.01A1 Each grower shall post sign markers which delineate sections of nursery stock. A section shall be no larger than five acres.

005.01B Inspection reports issued to growers shall contain a list of plants inspected and the plant pests found at the time of inspection. Withdrawal-from-distribution orders shall be considered part of the inspection reports. The withdrawal-from-distribution order shall contain a list of plants withdrawn from distribution and the location of the plants. The Department may post signs to delineate sections withdrawn from distribution. These signs must remain in place until an authorized person from the Department removes them, or the Department authorizes, in writing, permission to allow the grower to remove the signs.

005.01C Inspection reports issued to dealers shall outline the violations involved and corrective actions to be taken including withdrawal-from-distribution orders which would specify nursery stock that could not be distributed from a certain area.

006 The Storage or Display of Nursery Stock.

006.01 Nursery stock shall not be displayed or stored in contact with concrete, asphalt, or other similar hard-surfaced areas unless moisture-retaining or heat-reducing material has been provided. Roots shall be protected from excessive heat, drying, and other adverse conditions. The authority to set regulations for the storage or display of nursery stock by dealers and growers is found in Neb. Rev. Stat. §§2-1096 and 2-10,101 of the Act.

006.01A Balled and burlapped nursery stock shall be kept moist at all times and in a moisture retaining material at a depth sufficient to cover approximately 75% of the ball.

006.01B Bare root nursery stock shall be kept under conditions of temperature, light, and moisture to retard etiolated or other abnormal growth and maintain viability. Moisture shall be supplied to the root system by high humidity conditions in storage or by covering the roots with moisture retaining material. The roots of healed-in-stock shall be covered by moisture retaining material.

006.01C Bench balled nursery stock shall be kept moist at all times and in a moisture retaining material at a depth sufficient to cover approximately 75% of the ball.

006.01D Container grown, potted, and balled and potted nursery stock shall be kept and displayed under conditions of temperature, light, and moisture sufficient to maintain the viability and vigor of the nursery stock. Potting medium shall be maintained at a depth sufficient to cover all roots of the plants.

006.01E Packaged nursery stock shall be stored and displayed under conditions of temperature and light that will retard etiolated growth or other abnormal growth and ensure adequate moisture.

007 Standards for Viability of Nursery Stock Distributed.

007.01 All nursery stock distributed by dealers, growers, collectors, and those requesting optional inspections shall meet the following standards of viability. That stock not meeting those minimum standards of viability shall not be offered for distribution. The authority to set viability standards for nursery stock distributed is found in Neb. Rev. Stat. §§2-1096, 2-1097, 2-1098, 2-10,101, 2-10,102, 2-10,103, 2-10,105, and 2-10,116 of the Act.

007.01A Woody stemmed deciduous stock shall have a moist, green cambium in the stems and branches and shall have viable buds or normal green, unwilted growth. Etiolated growth from individual buds shall not be more than four inches.

007.01B Rose bushes shall have a moist, green cambium in each cane at least six inches above the graft. Etiolated growth from individual buds shall not be more than four inches.

007.01C Balled and burlapped nursery stock shall have a moist, green cambium in the stems and branches and shall have viable buds or normal green, unwilted growth. Etiolated growth from individual buds shall not be more than four inches. Balled and burlapped nursery stock shall have secure earth balls that shall meet or exceed the size specified by the *American Standard for Nursery Stock*.

007.01D Herbaceous perennials shall not be wilted or in such condition indicative of subnormal viability.

007.01E Colored waxes or other materials used to coat the aerial parts of the plants, that change the appearance of the plant surface so as to

prevent adequate inspection, are prohibited.

007.01F Nursery stock with plant pest infestations or serious damage as a result of plant pest infestations shall not be distributed.

007.01G Nursery stock distributed by dealers, growers, collectors, and those with optional inspections shall not contain actively growing weeds.

007.01H Nursery stock environmentally or mechanically damaged or damaged by animals shall not be distributed if normal growth and development would be inhibited. Examples include, but are not limited to, cultivator damage, deer damage, rabbit damage, hail damage, sunscald and frost cracks. Nursery stock will be ordered destroyed if 40% or greater of the cambium layer of the trunk or crown is damaged. If 20 to 40% of the cambium layer of the trunk or crown is damaged, nursery stock may be withdrawn from distribution.

007.01I Nursery stock shall not be distributed with plastic burlap. All other non-decomposing material enclosing balls of soil and all nursery stock bound with plastic rope shall be untied when active growth begins. Rope used to tie up the branches of trees shall be removed when active growth begins.

007.01J Any plant not meeting the above criterion may be pruned to remove dead or damaged branches and canes or etiolated growth and may then be distributed.

008 Labeling and Shipment of Nursery Stock.

008.01 The proper labeling and record keeping of nursery stock distributed or received by dealers, growers, collectors, brokers and those with optional inspections is authorized by Neb. Rev. Stat. §§2-1091.01, 2-10,106, 2-10,108, and 2-10,116 of the Act.

008.01A All nursery stock distributed in Nebraska shall be individually labeled to include:

008.01A1 Correct common name or botanical name; and

008.01A2 Place of origin of nursery stock except that container grown or potted nursery stock of one gallon or less is not required to have an individual place of origin label.

008.01A2a Place of origin labels may be in code, provided the Department is given access to the code.

008.01B Dealers, growers, collectors, brokers, and those with optional inspections shall maintain for three years shipment records, packing slips, and other records of:

008.01B1 The name and address of any person from which nursery stock was received and the receiving date;

008.01B2 The name and quantity of the contents;

008.01B3 The place of origin; and

008.01B4 A license or its equivalent issued by the recognized authorized agency stating that the nursery from which the nursery stock originates has been inspected.

008.01C All collected nursery stock shall be labeled as collected.

008.01D When grade classifications are declared, they shall be in accordance with those adopted pursuant to 25 NAC 13-002 in addition to the requirements in Neb. Rev. Stat. §2-10,106 of the Act.

008.01E When nursery stock is distributed in a group or bundle of the same species and variety, a label on the group or bundle shall be an adequate label and shall include the requirements in Neb. Rev. Stat. §2-10,106 of the Act.

008.01F When nursery stock is from a quarantined area, the shipment must include the proper documentation and compliance labeling of any applicable federal or state quarantine.

008.01G When nursery stock is distributed to the final customer and planted, the label may be omitted if the information required in 25 NAC 13-008.01A for that nursery stock is listed on the invoice or receipt.

009 Inspection and Certification of Plants and Plant Products for Export.

009.01 The inspection of plants and plant products for export, the issuance of phytosanitary or export certificates, and fees assessed is authorized in Neb. Rev. Stat. §§2-1091 and 2-10,110 of the Act.

009.01A Most foreign countries have quarantines, requirements, and regulations that must be met before a plant or plant product may be imported into their country. Nebraska plants and plant products would not be admissible into the foreign country unless those shipments were inspected and certified by the appropriate plant regulatory agency.

009.01B An exporter of plants or plant products desiring to originate shipments from Nebraska to a foreign country requiring a phytosanitary or export certificate shall submit an application to the Department. The application shall be made on forms provided or approved by the Department.

009.01C The Department shall conduct inspections of plants, plant products, or facilities for persons that have applied for or intend to apply for a phytosanitary or export certificate from the Department. Inspections shall include one or more of the following:

009.01C1 An inspection of the plants or plant products intended for export under a phytosanitary or export certificate and if necessary; or

009.01C2 Field inspections of growing plants to determine presence or absence of plant diseases; or

009.01C3 Laboratory diagnosis for presence or absence of plant diseases; or

009.01C4 Observation and evaluation of procedures and facilities utilized in handling plants and plant products; or

009.01C5 Review of USDA, Federal Grain Inspection Service (FGIS) Official Export Grain Inspection Certificate logs.

009.01D The Department may issue a phytosanitary or export certificate if the plants or plant products satisfactorily meet the requirements of the importing foreign country and the USDA/APHIS requirements. The requirements of the destination countries shall be met by the applicant.

009.01E The Department shall assess the following fees for the inspection, service and work performed in carrying out the issuance of a phytosanitary or export certificate. The inspection fee shall be assessed on mileage and inspection time.

009.01E1 Mileage charge - \$0.24 per mile.

009.01E2 Inspection time - \$15.00 per hour.

009.01E3 Inspection time shall include the driving time to and from the location in addition to the time spent conducting the inspection.

009.01E4 Except as provided in 25 NAC 13-009.01E5, a fee of \$30.00 shall be assessed for each phytosanitary or export certificate issued in addition to any other charges as described in 25 NAC 13-009.01E6.

009.01E5 A fee of \$10.00 shall be assessed for each phytosanitary or export certificate issued, in addition to any other charges as described in 25 NAC 13-009.01E6 for the following applicants:

009.01E5a Any university or college needing a phytosanitary or export certificate for academic research purposes;

009.01E5b Any agency, board, or commission of the state of Nebraska; and

009.01E5c Any licensed grower requesting a phytosanitary or export certificate for nursery stock shipments.

009.01E6 Any application made to the Department by telephone shall be assessed an additional fee of \$7.00.

009.01F The Department shall refuse the issuance of a phytosanitary or export certificate for any of the following reasons:

009.01F1 Failure of the plants or plant products to meet quarantine, regulations, and requirements imposed by the country for which the phytosanitary or export certificate is being requested.

009.01F2 Failure to completely or accurately provide the information requested on the application form.

009.01F3 Failure to ship the exact plants or plant products which were inspected and approved.

009.01F4 Failure to pay any fees or costs due the Department.

010 Compliance with European Corn Borer Quarantines Maintained in Other States of the United States.

010.01 Inspection of facilities or equipment, the issuance of certificates and the fees assessed associated with the compliance to the European corn borer quarantines of other states are authorized in Neb. Rev. Stat. §§2-1091 and 2-10,110 of the Act.

010.01A Statement of Purpose - The European corn borer (*Ostrinia nubilalis*) is an insect found statewide in Nebraska and causes severe damage to various plants. However, this insect is not distributed across the United States. A number of states have imposed and maintain a quarantine prohibiting the introduction of this pest into their state. States with a quarantine in effect are Arizona, California, Florida, Hawaii, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and the Canadian provinces of Alberta and British Columbia. The quarantines maintained by these states and provinces prevent the shipment of Nebraska grown corn, sorghums, broomcorn, and sudan seeds, unless such shipments have been duly certified to have been treated in a manner that would exclude the live larvae of the European corn borer.

010.01B Any grain distribution facility desiring to originate shipments of corn, sorghums, broomcorn, or sudan seeds to states maintaining European corn borer quarantines may apply for an inspection of their facilities and equipment by the Department. An application shall be made on forms provided by the Department. After enrollment in the program, it shall be the responsibility of the facility manager or the facility's appointed person to review the screening and loading process of quarantine commodities.

010.01C When conducting inspections of grain distribution facilities, the Department shall be guided by the requirements of those states and provinces maintaining quarantines. The requirements of the destination state or province shall be met. The Department shall maintain current information with respect to the quarantine requirements of the individual states and provinces and shall make available such information to the grain distribution facilities within the state.

010.01D The Department shall conduct inspections of the grain distribution facilities upon initial request to enter into the European corn borer quarantine program. After initial enrollment into the program, periodic inspections shall be conducted. Inspections may include one or more of the following:

010.01D1 Inspection of facilities and equipment.

010.01D2 Inspection of grain shipments.

010.01D3 Observation and evaluation of procedures utilized in handling and inspecting grain shipments, and issuing European Corn Borer Certificates.

010.01E The Department shall issue a European Corn Borer Quarantine Inspection Certificate to those facilities which have met the requirements of those states and provinces maintaining quarantines and paid the annual fee. The certificate shall be valid for one year after issuance unless revoked sooner by the Department. European Corn Borer Certificates may not be sold to a person until the European Corn Borer Quarantine Inspection Certificate has been issued to the facility.

010.01F The Department shall assess the following fees for the issuance of a European Corn Borer Quarantine Inspection Certificate and European Corn Borer Certificates.

010.01F1 The annual fee for the issuance of a European Corn Borer Quarantine Inspection Certificate shall be \$50.00.

010.01F2 The cost for each European Corn Borer Certificate shall be 25 cents. The certificates are sold in pads of 25 for \$6.25 a pad.

010.01G The Department may revoke a European Corn Borer Quarantine Inspection Certificate for any of the following reasons:

010.01G1 Failure to completely and accurately provide the information requested on the application, or failure to carry out the assurances set forth therein.

010.01G2 Failure to pay any fees or costs due the Department.

010.01G3 Failure to maintain facilities and equipment in the manner prescribed by the Department.

010.01G4 Failure to conduct inspections of grain shipments in the manner prescribed by the Department.

010.01G5 Failure to utilize the grain handling and inspection procedures prescribed by the Department.

010.01G6 Failure to issue European Corn Borer Certificates in the manner prescribed by the Department.

011 Importation and Distribution of Live Plant Pests, Biological Control Agents and Soils.

011.01 The regulation of importation of live plant pests, biological control agents, and soils is authorized under Neb. Rev. Stat. §2-10,113.

011.01A Persons desiring to import live plant pests, biological control agents, or soils are required to obtain a permit prior to shipment from the Department.

011.01A1 Permits issued shall be valid for the period of time specified.

011.01B Exemptions to 25 NAC 13-011.01A are:

011.01B1 Those live plant pests, biological control agents, or soils which have received a permit issued by the USDA/APHIS and were approved by the Department.

011.01B2 Those biological control agents which have received U.S. Environmental Protection Agency product registration under section 3 of the Federal Insecticide Fungicide and Rodenticide Act; and

011.01B3 Honey bees of the species Apis mellifera.

011.01C Regulations for the shipment of live plant pests, biological control agents, or soils under permit.

011.01C1 All shipments shall be in sturdy escape-proof containers; and

011.01C2 Each shipment shall be accompanied by a copy of the permit and a label identifying the shipment.

011.01C3 Any shipment which is not authorized by this section shall be destroyed after the Department has been notified or returned to the shipment's point of origin.

011.01D The containment of plant pests utilized for research, analysis, or other educational purposes.

011.01D1 Safety standards for laboratory and greenhouse should be followed as written in Safeguard Guidelines for Containment of Plant Pests Under Permit by USDA/APHIS PPQ, APHIS 81-61, June, 1983.

012 Assessment of Administrative Fines. If any person licensed pursuant to the Act fails to comply with Neb. Rev. Stat. §2-10,103, the

Department may impose an administrative fine pursuant to Neb. Rev. Stat. §§2-10,103.01 and 2-10,103.02 and this section.

012.01 In addition to the definitions set forth in 25 NAC 13-001, the following shall apply to this section:

012.01A Level of violation shall mean that the alleged violation is a first, second, or third or more violation.

012.01A1 A first violation occurs when the alleged violator has not been found by an order of the Director or by his or her own admission in a consent agreement to have committed the same alleged violation in the last three years.

012.01A2 A second violation occurs when the alleged violator has been found by an order of the Director or by his or her own admission in a consent agreement to have committed the same alleged violation once within the last three years of committing the current alleged violation.

012.01A3 A third violation occurs when the alleged violator has been found by an order of the Director or by his or her own admission in a consent agreement to have committed the same alleged violation at least two times within the last three years of committing the current alleged violation.

012.01B Median fine shall mean the fine to be assessed in the absence of aggravating factors or mitigating factors or when the aggravating factors and the mitigating factors are equally applicable.

012.01C Aggravating factors shall mean findings of fact which enhance the seriousness of a violation and indicate a larger fine than the median fine would be appropriate. Such factors include:

012.01C1 The potential for the violation to cause serious economic injury for persons or serious physical injury to plants.

012.01C2 The actual economic injury to persons or physical injury to plants.

012.01C3 The alleged violator's intentional, willful, or negligent failure to avoid the violation.

012.01C4 The failure by the alleged violator to take steps to remedy the violation.

012.01C5 The similarity of the current alleged violation to previous violations that occurred within the last three years.

012.01C6 The alleged violator's financial gain from the violation.

012.01C7 The alleged violator's likeliness to repeat the violation.

012.01C8 The alleged violator's nondisclosure of the violation to the Department.

012.01C9 The alleged violator's failure to cooperate with the investigation of the Department.

012.01D Mitigating factors shall mean findings of fact which reduce the seriousness of the violation and indicate a smaller fine than the median fine would be appropriate. Such factors include:

012.01D1 The lack of potential economic injury to persons or physical injury to plants.

012.01D2 The lack of actual economic injury to persons or physical injury to plants.

012.01D3 The unintentional, nonwillful, or non-negligent nature of the violation.

012.01D4 The alleged violator's attempts to take remedial action regarding the violation.

012.01D5 The lack of previous similar violations within the last three years.

012.01D6 The lack of the alleged violator's financial gain from the violation.

012.01D7 The unlikelihood that the alleged violator would repeat the violation.

012.01D8 The alleged violator's disclosure of the violation to the Department.

012.01D9 The alleged violator's cooperation with the investigation of the Department, or related investigations, including entering into a consent agreement.

012.01E The type of the alleged violation shall mean the category of the violation as a type I, type II, or type III violation.

012.01E1 Type I violation shall mean the least serious violations and includes:

012.01E1a Failing to post a grower's or dealer's license in a conspicuous place at the distribution location.

012.01E1b Failing to report to the Department in writing the amount and type of plants treated or destroyed under the requirements of a withdrawal-from-distribution order.

012.01E1c Distributing nursery stock not labeled according to the standards set forth in 25 NAC 13-008.

012.01E1d Distributing nursery stock that is not stored or displayed under conditions which maintain its vigor according to the standards set forth in 25 NAC 13-006.

012.01E1e Distributing nursery stock containing actively growing weeds.

012.01E1f Failing to delineate sections of nursery stock with sign markers.

012.01E1g Violating Neb. Rev. Stat. §2-10,115(1)(m).

012.01E2 Type II violations shall mean moderately serious violations and includes:

012.01E2a Failing to maintain a complete and accurate list with the Department of all sources from which nursery stock is obtained.

012.01E2b Receiving nursery stock from a federal or state quarantined area without the proper quarantine certificates or documentation of quarantine compliance.

012.01E2c Failing to carry out treatment or destruction of nursery stock as ordered by the withdrawal-from-distribution order within 30 days.

012.01E2d Mislabeling nursery stock by using the wrong common name or botanical name.

012.01E2e Distributing nursery stock that is not sound, healthy, and reasonably capable of growth.

012.01E2f Failing to keep and make available for examination by the Department all books, papers, and other information necessary for the enforcement of the Act.

012.01E2g Failing to maintain nursery stock in a manner accessible to the Department.

012.01E3 Type III violations shall mean the most serious violations and includes:

012.01E3a Acquiring for distribution nursery stock from any person who has not been duly licensed under the Act.

012.01E3b Using any license issued by the Department; after it has been revoked or has expired, while the license is under suspension, or, for purposes other than those authorized by the Act.

012.01E3c Allowing a license to be used by any person other than the person to whom it was issued.

012.01E3d Knowingly moving any regulated article into the state from a quarantined area of any other state when such article has not been treated or handled as provided by the requirements of the quarantine.

012.01E3e Distributing nursery stock which has been withdrawn from distribution.

012.01E3f Distributing nursery stock that is not free from quarantined plant pests.

012.01E3g Distributing biological control agents or genetically engineered plant organisms without a permit, if a permit is required by the Act.

012.01E3h Interfering with the Department in the performance of its duties.

012.01E3i Failing to comply with an order of the Director.

012.01F Consent agreement shall mean a written agreement between the Department and the alleged violator, setting forth an admission of the alleged violation and a consent to the assessment of a stated fine.

012.02 The amount of the fine assessed under this section shall be determined by the Director based on the type of violation, the level of violation, and whether or not facts exist to prove mitigating factors or aggravating factors.

012.02A The Director shall determine the fine based on the fine assignment schedule tables as follows:

012.02A1 For type I violations, the Fine Assignment Schedule Table in 25 NAC 13-014.01 shall be used.

012.02A2 For type II violations, the Fine Assignment Schedule Table in 25 NAC 13-014.02 shall be used.

012.02A3 For type III violations, the Fine Assignment Schedule Table in 25 NAC 13-014.03 shall be used.

012.03 The Director shall apply the median fine unless mitigating factors or aggravating factors are found or when the aggravating factors or mitigating factors are equivalently cogent.

012.04 An alleged violator shall be subject to the assessment of a fine for each commission of a violation, but may not be fined for any lesser included violation, arising out of the same act, if the alleged violator has been fined for the greater violation.

013 Administration. These regulations shall be administered by the Nebraska Department of Agriculture, Bureau of Plant Industry, located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln,

Nebraska 68509-4756; telephone number (402) 471-2394.

014 Fine Assignment Schedule Tables.

014.01 Fine Assignment Schedule Table - Type I

Type I (Least Serious) Category of Violation

Level of Violation	Mitigated	Median	Aggravated
FIRST	\$20	\$40	\$60
SECOND	\$40	\$60	\$100
THIRD	\$80	\$120	\$200

014.02 Fine Assignment Schedule Table - Type II

Type II (Moderately Serious) Category of Violation

Level of Violation	Mitigated	Median	Aggravated
FIRST	\$50	\$100	\$200
SECOND	\$100	\$200	\$300
THIRD	\$200	\$300	\$400

014.03 Fine Assignment Schedule Table - Type III

Type III (Most Serious) Category of Violation

Level of Violation	Mitigated	Median	Aggravated
FIRST	\$100	\$200	\$300
SECOND	\$200	\$300	\$400
THIRD	\$300	\$400	\$500

015 Publication Adopted. See Appendix A.

016 Annotation. Neb. Rev. Stat. §§2-1072 to 2-10,117 (Reissue 1991, Cum. Supp. 1994).

TITLE 27 - DEPARTMENT OF AGRICULTURE, DIVISION OF WEIGHTS

AND MEASURES

Chapter 1 - Voluntary Registration of Servicemen and Service

Agencies for Commercial Weighing and Measuring

Devices

001 Policy. It shall be the policy of the Director of Agriculture to accept voluntary registration of individuals and agencies that provide acceptable evidence that they are fully qualified to install, service, repair, or recondition a commercial weighing or measuring device, have a thorough working knowledge of all appropriate weights and measures laws, orders, rules, and regulations and have possession of, or available for use, weights and measures standards and testing equipment appropriate in design and adequate in amount. This policy shall in no way preclude or limit the right and privilege of any qualified individual or agency not registered with the Director to install, service, repair, or recondition a commercial weighing or measuring device.

002 Definitions.

002.01 Director shall mean the Director of Agriculture.

002.02 Registered serviceman shall mean any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device, and who voluntarily registers himself as such with the Director.

002.03 Registered service agency shall mean any agency, firm, partnership, company, or corporation which, for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device, and which voluntarily registers itself as such with the Director. Under agency registration, identification of individual servicemen shall be required.

002.04 Individual serviceman shall mean a serviceman working for a service agency who is identified on the agency's application for registration and whose competence has been certified to by such agency.

002.05 The term commercial weighing and measuring device shall be construed to include any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure, and shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.

003 Reciprocity. The Director may enter into an informal reciprocal agreement with any other State or States that has or have similar voluntary registration policies. Under such agreement, the registered servicemen and the registered service agencies of the States party to the reciprocal agreement are granted full reciprocal authority, including reciprocal recognition of certification of standards and testing equipment, in all States party to such agreement.

004 Voluntary Registration. A serviceman or service agency may apply for voluntary registration to service weighing devices or measuring devices on an application form supplied by the Director. Said form, duly signed and verified, shall include certification by the applicant that:

004.01 The serviceman or individual servicemen working for a registered service agency are fully qualified to install, service, repair, or recondition whatever devices for the service of which competence is being registered,

004.02 The serviceman or service agency has in possession, or available for use, all necessary testing equipment and standards, and

004.03 The serviceman or individual servicemen working for a registered service agency have full knowledge of all appropriate weights and measures laws, orders, rules, and regulations. An applicant also shall submit appropriate evidence or references as to qualifications.

005 Registration Fee. Each registered serviceman and registered service agency shall pay to the Director an annual registration fee to cover the costs of administering the plan. The fee for each registered serviceman shall be forty-five dollars (\$45.00). The fee for each registered service agency shall be an amount equal to forty-five dollars (\$45.00) per individual serviceman working for such agency. (For example: 4 individual serviceman x \$45.00 = \$180.00). Whenever a registered service agency acquires additional individual servicemen after having paid the annual fee, such agency shall, at the time of acquiring the additional servicemen, pay to the Director a pro-rata share of the annual fee for each new serviceman based on the number of months remaining until the time the next annual fee is due. The pro-rata fee for each individual serviceman shall be \$3.75 per month. In the case of replacement personnel, no additional fee shall be required.

006 Certificate of Registration. Upon receipt and acceptance of a properly executed application form, and initial examination and certification of standards and testing equipment to be used, the Director shall, after having received the applicant's annual registration fee, issue to the applicant a Certificate of Registration, including an assigned registration number, which shall remain effective until either returned by the applicant or withdrawn by the Director. Under agency registration, each individual serviceman shall be issued a Certificate of Registration.

007 Privileges of a Voluntary Registrant. A bearer of a Certificate of Registration shall have the authority to remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the Director; place in service, until such time as an official examination can be made, a weighing or measuring device that has been officially rejected; and place in service, until such time as an official examination can be made, a new or used weighing or measuring device. All work on weighing and measuring devices restored to service or placed in service shall be performed by or under the direct supervision of a bearer of a certificate of registration.

008 Responsibilities of Voluntary Registrant. It shall be the responsibility of the bearer of a Certificate of Registration to comply with the provisions of National Bureau of Standards Handbook 44, and the Examination Procedure Outlines (E.P.O.'s) published by the National Bureau of Standards.

009 Placed in Service Report. The Director shall furnish each registered serviceman and registered service agency with a supply of report forms to be known as placed in Service Reports. Such a form shall be executed in triplicate, shall include the assigned registration number, and shall be signed by a registered serviceman or by an individual serviceman representing a registered agency for each rejected device restored to service and for each newly installed device placed in service. Within 24 hours after a device is restored to service, or placed in service, the original of the properly executed Placed in Service Report, together with any official rejection tag removed from the device, shall be mailed to the Director at the Department of Agriculture, Division of Weights and Measures, P.O. Box 4695, State House, Lincoln, Nebraska, 68509. The duplicate copy of the report shall be handed to the owner or operator of the device, and the triplicate copy of the report shall be retained by the registered serviceman or agency.

010 Standards and Testing Equipment. A registered serviceman and a registered service agency shall submit to the Weights and Measures Laboratory in Lincoln, upon initial application for voluntary registration and at least annually thereafter, for its examination and certification, any standards and testing equipment that are used or are to be used, in the performance of the service and testing functions with respect to weighing and measuring devices for which competence is registered. The cost of such inspection and certification shall be paid by the registrant in an amount based upon the Standards Laboratory Fee Schedule contained in the rules and regulations of the Department. A

registered serviceman or agency shall not use, in servicing commercial weighing or measuring devices, any standards or testing equipment that have not been certified by the Director.

011 Publication of Lists of Approved Standards and Testing Equipment. The Director shall publish from time to time as he deems appropriate, and may supply upon request, information concerning standards and testing equipment acceptable for use by registered servicemen and registered service agencies.

012 Revocation of Certificate of Registration. The Director may, for good cause, after careful investigation and consideration, suspend or revoke a Certificate of Registration.

013 Publication of Lists of Registered Servicemen and Registered Service Agencies. The Director may publish, from time to time as he deems appropriate, and may supply upon request, lists of registered servicemen and registered service agencies.

014 Effective Date. This regulation shall become effective on January 1, 1974.

015 Annotation. Neb. Rev. Stat. §§89-183 to 89-1,103.